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9

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION

13 JAMES R. GLIDEWELL DENTAL
CERAMICS, INC. dba GLIDEWELL
14 LABORATORIES, a California
corporation,

15 Plaintiff,

16 vs.

17 KEATING DENTAL ARTS, INC., a
18 California corporation,

19 Defendant.

20
21 AND RELATED
22 COUNTERCLAIMS.
23

Case No. SACV11-01309-DOC (ANx)
Hon. David O. Carter, Ctrm. 9D

**JAMES R. GLIDEWELL DENTAL
CERAMICS, INC.'S
MEMORANDUM OF
CONTENTIONS OF FACT AND
LAW**

Pre-Trial Conf.: January 28, 2013
Jury Trial: February 26, 2013

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6 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition (4th ed. 2010) § 31:44.	43, 97

Pursuant to Local Rule 16-4. Plaintiff and counter-defendant James R. Glidewell Dental Ceramics, Inc. ("Glidewell") hereby submits this Memorandum of Contentions of Fact and Law.

I. GLIDEWELL'S CLAIMS

A. Summary Statement of the Claims Glidewell has Pleaded and Plans to Pursue

Claim 1: Keating has infringed and continues to infringe Glidewell's rights in its federally registered Trademark Reg. No. 3,739,663 in violation of section 32(a) of the Lanham Act, § 1114;

Claim 2: Keating has infringed and continues to infringe Glidewell's rights in its unregistered BruxZir mark in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125;

Claim 3: Keating has engaged and continues to engage in unfair competition in violation of Cal. Bus. & Prof. Code § 17200 *et seq.*

B. Elements Required to Establish Glidewell's Claims

1. Glidewell's Claim 1: Infringement of Federally Registered Trademark

- a. BruxZir is a valid, protectable trademark;
- b. Glidewell owns the BruxZir trademark; and
- c. Keating's use of KDZ Bruxer, without Glidewell's consent, is likely to cause consumer confusion.

See Ninth Circuit Manual of Model Civil Jury Instructions No. 15.5; Rearden LLC v. Rearden Commerce, Inc., 683 F.3d 1190, 1202 (9th Cir. 2012); *Brookfield Communications, Inc. v. West Coast Entertainment Corp.*, 174 F.3d 1036, 1046 (9th Cir. 1999).

2. Glidewell's Claim 2: Violation of Lanham Act, Section 43(a)

- a. BruxZir is a valid, protectable trademark;

- 1 b. Glidewell owns the BruxZir trademark; and
- 2 c. Keating's use of KDZ Bruxer, without Glidewell's
- 3 consent, is likely to cause consumer confusion.

4 See Ninth Circuit Manual of Model Civil Jury Instructions No. 15.5;
5 *Brookfield Communications, Inc. v. West Coast Entertainment Corp.*, 174 F.3d
6 1036, 1046, 1047 n.8 (9th Cir. 1999).

7 **3. Glidewell's Claim 3: Unfair Competition Under Cal. Bus.**
8 **& Prof. Code**

- 9 a. Keating's actions constitute an unlawful, unfair or
- 10 fraudulent business act or practice, or unfair, deceptive, untrue or misleading
- 11 advertising; and
- 12 b. Glidewell has suffered injury in fact and lost money or
- 13 property as a result of the unfair competition.

14 See Cal. Bus. & Prof. Code §§ 17200, 17204.

15 **4. Glidewell's Claims 1-2: Monetary Recovery**

- 16 a. Keating had either statutory or actual notice that the
- 17 Plaintiff's trademark was registered (Claim 1 only);
- 18 b. Keating derived profits from sales of product under the
- 19 KDZ Bruxer mark; and/or
- 20 c. Glidewell suffered actual damages due to Keating's sales
- 21 of product under the KDZ Bruxer mark.

22 See Ninth Circuit Manual of Model Civil Jury Instructions Nos. 15.24-26.

23 **5. Glidewell's Claims 1-3: Injunctive Relief**

- 24 a. Glidewell will suffer irreparable injury from continued
- 25 infringement;
- 26 b. Remedies available at law are inadequate to compensate
- 27 for that injury;
- 28

1 c. Considering the balance of hardships between the
2 Glidewell and Keating, a remedy in equity is warranted; and

3 d. The public interest would not be disserved by a
4 permanent injunction.

5 *See eBay Inc. v. MerExchange, L.L.C.*, 547 U.S. 388, 391 (2006); Cal. Bus.
6 & Prof. Code § 17203 (injunction available for violation of section 17200).

7 **C. Brief Description of Key Evidence in Support of Glidewell's**
8 **Claim for Infringement of a Federally Registered Trademark**

9 Plaintiff identifies at least the following key evidence in support of its
10 claims. Plaintiff reserves the right to enlarge or otherwise modify this list.

11 **1. Glidewell's Claim 1: Infringement of Federally Registered**
12 **Trademark**

13 • Testimony of James Shuck concerning creation of the BruxZir mark;
14 advertising and promotion of the BruxZir mark and BruxZir-branded products;
15 development, features, characteristics, and indicated uses of BruxZir-branded
16 products; use of the terms “bruxer” and “bruxer crown” in the dental industry; facts
17 indicating non-genericness of the BruxZir mark; facts indicating the strength of the
18 BruxZir mark and its indication of Glidewell Laboratories as a source of goods and
19 services; facts relating to likelihood of confusion between the BruxZir mark and
20 “KDZ Bruxer”; the commercial strength of the BruxZir mark, the proximity of the
21 goods marketed under the BruxZir and KDZ Bruxer marks, the channels through
22 which BruxZir and KDZ Bruxer brand goods are marketed, the type of goods
23 marketed under those marks, and the degree of care typically used in selecting a
24 particular brand of such goods.

25 • Testimony of Dr. Michael DiTolla concerning creation of the BruxZir
26 mark; advertising and promotion of the BruxZir mark and BruxZir-branded
27 products; development, features, characteristics, and indicated uses of BruxZir-
28 branded products; use of the terms “bruxer” and “bruxer crown” in the dental

1 industry; generic terms for full contour zirconia crowns; treatments for patients with
2 bruxism; facts indicating non-genericness of the BruxZir mark; facts indicating the
3 strength of the BruxZir mark and its indication of Glidewell Laboratories as a
4 source of goods and services; facts relating to likelihood of confusion between the
5 BruxZir mark and “KDZ Bruxer”; pronunciation of the terms "BruxZir" and
6 "bruxer" by dental practitioners; the commercial strength of the BruxZir mark, the
7 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
8 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
9 type of goods marketed under those marks, and the degree of care typically used in
10 selecting a particular brand of such goods. Expert testimony concerning
11 distinctiveness (and nongenericness) of the BruxZir mark, including that the mark
12 is suggestive; generic terms for full contour zirconia crowns; treatments for patients
13 with bruxism.

14 • Testimony of Nicole Fallon concerning one or more instances of actual
15 confusion.

16 • Testimony of Robin Bartolo concerning development, features,
17 characteristics, and indicated uses of BruxZir-branded products; use of the terms
18 “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
19 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
20 and its indication of Glidewell Laboratories as a source of goods and services; and
21 operation of Glidewell's Authorized Labs program, Glidewell Direct, and
22 Glidewell’s interactions with Authorized BruxZir Labs.

23 • Testimony of Robin Carden concerning development, features,
24 characteristics, and indicated uses of BruxZir-branded products; use of the terms
25 “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
26 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
27 and its indication of Glidewell Laboratories as a source of goods and services;
28 Glidewell’s interactions with Authorized BruxZir Labs and operation of Glidewell's

1 Authorized Labs program; and commercial strength of the BruxZir mark, including
2 technical and educational presentations concerning BruxZir brand product.

3 • Testimony of Rudy Ramirez concerning creation of the BruxZir mark;
4 development, features, characteristics, and indicated uses of BruxZir-branded
5 products; use of the terms “bruxer” and “bruxer crown” in the dental industry; facts
6 indicating non-genericness of the BruxZir mark; facts indicating the commercial
7 strength of the BruxZir mark and its indication of Glidewell Laboratories as a
8 source of goods and services.

9 • Testimony of Keith Allred concerning Glidewell’s ownership of the
10 BruxZir mark and Trademark Reg. No. 3,739,663, and Glidewell’s enforcement of
11 its rights in the BruxZir mark.

12 • Testimony of Glenn Sasaki concerning Glidewell’s damages and
13 Keating’s profits.

14 • Testimony of Ronald Goldstein, D.D.S. concerning the validity
15 (distinctiveness and nongenericness) of the BruxZir mark, the conceptual and
16 commercial strength of the BruxZir mark, the proximity of the goods marketed
17 under the BruxZir and KDZ Bruxer marks, the channels through which BruxZir and
18 KDZ Bruxer brand goods are marketed, the type of goods marketed under those
19 marks, the degree of care typically used in selecting a particular brand of such
20 goods, and the likelihood of confusion resulting from Keating’s use of KDZ
21 Bruxer; generic terms for full contour zirconia crowns; treatments for patients with
22 bruxism

23 • Testimony of David Franklyn concerning the validity (distinctiveness
24 and nongenericness) of the BruxZir mark, the conceptual and commercial strength
25 of the BruxZir mark, the proximity of the goods marketed under the BruxZir and
26 KDZ Bruxer marks, the channels through which BruxZir and KDZ Bruxer brand
27 goods are marketed, the type of goods marketed under those marks, the degree of
28 care typically used in selecting a particular brand of such goods, and the likelihood

1 of confusion resulting from Keating's use of KDZ Bruxer.

2 • Testimony of Gregory Doneff, D.D.S. concerning the validity of the
3 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
4 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
5 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
6 type of goods marketed under those marks, and the degree of care typically used in
7 selecting a particular brand of such goods; use of the terms "bruxer" and "bruxer
8 crown" in the dental industry; facts indicating non-genericness of the BruxZir mark;
9 facts indicating the strength of the BruxZir mark and its indication of Glidewell
10 Laboratories as a source of goods and services; facts relating to likelihood of
11 confusion between the BruxZir mark and "KDZ Bruxer."

12 • Testimony of Howard Cohen, D.D.S. concerning the validity of the
13 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
14 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
15 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
16 type of goods marketed under those marks, and the degree of care typically used in
17 selecting a particular brand of such goods; use of the terms "bruxer" and "bruxer
18 crown" in the dental industry; facts indicating non-genericness of the BruxZir mark;
19 facts indicating the strength of the BruxZir mark and its indication of Glidewell
20 Laboratories as a source of goods and services; facts relating to likelihood of
21 confusion between the BruxZir mark and "KDZ Bruxer."

22 • Testimony of Spencer Luke, D.M.D. concerning the validity of the
23 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
24 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
25 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
26 type of goods marketed under those marks, and the degree of care typically used in
27 selecting a particular brand of such goods; use of the terms "bruxer" and "bruxer
28 crown" in the dental industry; facts indicating non-genericness of the BruxZir mark;

1 facts indicating the strength of the BruxZir mark and its indication of Glidewell
2 Laboratories as a source of goods and services; facts relating to likelihood of
3 confusion between the BruxZir mark and “KDZ Bruxer.”

4 • Testimony of Stuart Newman, D.D.S. concerning the validity of the
5 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
6 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
7 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
8 type of goods marketed under those marks, and the degree of care typically used in
9 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
10 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
11 facts indicating the strength of the BruxZir mark and its indication of Glidewell
12 Laboratories as a source of goods and services; facts relating to likelihood of
13 confusion between the BruxZir mark and “KDZ Bruxer.”

14 • Testimony of Thomas Bell, D.M.D. concerning the validity of the
15 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
16 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
17 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
18 type of goods marketed under those marks, and the degree of care typically used in
19 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
20 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
21 facts indicating the strength of the BruxZir mark and its indication of Glidewell
22 Laboratories as a source of goods and services; facts relating to likelihood of
23 confusion between the BruxZir mark and “KDZ Bruxer.”

24 • Testimony of Terence Michiels, D.D.S. concerning the validity of the
25 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
26 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
27 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
28 type of goods marketed under those marks, and the degree of care typically used in

1 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
2 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
3 facts indicating the strength of the BruxZir mark and its indication of Glidewell
4 Laboratories as a source of goods and services; facts relating to likelihood of
5 confusion between the BruxZir mark and “KDZ Bruxer.”

6 • Testimony of Kent Toca, D.D.S. concerning the validity of the
7 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
8 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
9 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
10 type of goods marketed under those marks, and the degree of care typically used in
11 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
12 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
13 facts indicating the strength of the BruxZir mark and its indication of Glidewell
14 Laboratories as a source of goods and services; facts relating to likelihood of
15 confusion between the BruxZir mark and “KDZ Bruxer.”

16 • Testimony of Dr. Michael Fanning concerning the validity of the
17 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
18 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
19 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
20 type of goods marketed under those marks, and the degree of care typically used in
21 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
22 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
23 facts indicating the strength of the BruxZir mark and its indication of Glidewell
24 Laboratories as a source of goods and services; facts relating to likelihood of
25 confusion between the BruxZir mark and “KDZ Bruxer.”

26 • Testimony of Dr. Vincent S. Cianciulli concerning the validity of the
27 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
28 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the

1 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
2 type of goods marketed under those marks, and the degree of care typically used in
3 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
4 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
5 facts indicating the strength of the BruxZir mark and its indication of Glidewell
6 Laboratories as a source of goods and services; facts relating to likelihood of
7 confusion between the BruxZir mark and “KDZ Bruxer.”

8 • Testimony of Dr. Ilya Benjamin concerning the validity of the BruxZir
9 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
10 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
11 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
12 goods marketed under those marks, and the degree of care typically used in
13 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
14 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
15 facts indicating the strength of the BruxZir mark and its indication of Glidewell
16 Laboratories as a source of goods and services; facts relating to likelihood of
17 confusion between the BruxZir mark and “KDZ Bruxer.”

18 • Testimony of Dr. Dean Saiki concerning the validity of the BruxZir
19 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
20 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
21 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
22 goods marketed under those marks, and the degree of care typically used in
23 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
24 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
25 facts indicating the strength of the BruxZir mark and its indication of Glidewell
26 Laboratories as a source of goods and services; facts relating to likelihood of
27 confusion between the BruxZir mark and “KDZ Bruxer.”

28 • Testimony of Dr. Robert McNicholas concerning the validity of the

1 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
2 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
3 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
4 type of goods marketed under those marks, and the degree of care typically used in
5 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
6 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
7 facts indicating the strength of the BruxZir mark and its indication of Glidewell
8 Laboratories as a source of goods and services; facts relating to likelihood of
9 confusion between the BruxZir mark and “KDZ Bruxer.”

10 • Testimony of Dr. Benjamin An concerning the validity of the BruxZir
11 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
12 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
13 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
14 goods marketed under those marks, and the degree of care typically used in
15 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
16 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
17 facts indicating the strength of the BruxZir mark and its indication of Glidewell
18 Laboratories as a source of goods and services; facts relating to likelihood of
19 confusion between the BruxZir mark and “KDZ Bruxer.”

20 • Testimony of Dr. Oscar Goren concerning the validity of the BruxZir
21 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
22 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
23 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
24 goods marketed under those marks, and the degree of care typically used in
25 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
26 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
27 facts indicating the strength of the BruxZir mark and its indication of Glidewell
28 Laboratories as a source of goods and services; facts relating to likelihood of

1 confusion between the BruxZir mark and “KDZ Bruxer.”

2 • Testimony of Dr. Dennis A. Gaishauer concerning the validity of the
3 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
4 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
5 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
6 type of goods marketed under those marks, and the degree of care typically used in
7 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
8 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
9 facts indicating the strength of the BruxZir mark and its indication of Glidewell
10 Laboratories as a source of goods and services; facts relating to likelihood of
11 confusion between the BruxZir mark and “KDZ Bruxer.”

12 • Testimony of Dr. Dr. Chester A. Bizga concerning the validity of the
13 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
14 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
15 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
16 type of goods marketed under those marks, and the degree of care typically used in
17 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
18 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
19 facts indicating the strength of the BruxZir mark and its indication of Glidewell
20 Laboratories as a source of goods and services; facts relating to likelihood of
21 confusion between the BruxZir mark and “KDZ Bruxer.”

22 • Testimony of Dr. Valentine Ferraris concerning the validity of the
23 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
24 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
25 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
26 type of goods marketed under those marks, and the degree of care typically used in
27 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
28 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;

1 facts indicating the strength of the BruxZir mark and its indication of Glidewell
2 Laboratories as a source of goods and services; facts relating to likelihood of
3 confusion between the BruxZir mark and “KDZ Bruxer.”

4 • Testimony of Dr. Paul Taylor concerning the validity of the BruxZir
5 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
6 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
7 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
8 goods marketed under those marks, and the degree of care typically used in
9 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
10 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
11 facts indicating the strength of the BruxZir mark and its indication of Glidewell
12 Laboratories as a source of goods and services; facts relating to likelihood of
13 confusion between the BruxZir mark and “KDZ Bruxer.”

14 • Testimony of Dr. Meredith S. Esposito concerning the validity of the
15 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
16 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
17 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
18 type of goods marketed under those marks, and the degree of care typically used in
19 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
20 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
21 facts indicating the strength of the BruxZir mark and its indication of Glidewell
22 Laboratories as a source of goods and services; facts relating to likelihood of
23 confusion between the BruxZir mark and “KDZ Bruxer.”

24 • Testimony of Dr. John Griffith concerning the validity of the BruxZir
25 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
26 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
27 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
28 goods marketed under those marks, and the degree of care typically used in

1 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
2 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
3 facts indicating the strength of the BruxZir mark and its indication of Glidewell
4 Laboratories as a source of goods and services; facts relating to likelihood of
5 confusion between the BruxZir mark and “KDZ Bruxer.”

6 • Testimony of Scott Bigler concerning the validity and commercial
7 strength of the BruxZir mark, and Glidewell Direct and Glidewell’s interactions
8 with Authorized BruxZir Labs.

9 • Testimony of Glenn Yamamoto concerning the validity and
10 commercial strength of the BruxZir mark, and Glidewell Direct and Glidewell’s
11 interactions with Authorized BruxZir Labs.

12 • Testimony of Jacob Trachsel concerning the validity and commercial
13 strength of the BruxZir mark, and Glidewell Direct and Glidewell’s interactions
14 with Authorized BruxZir Labs.

15 • Testimony of Kareen Chamberlain concerning the validity and
16 commercial strength of the BruxZir mark, and Glidewell Direct and Glidewell’s
17 interactions with Authorized BruxZir Labs.

18 • Testimony of Shaun Keating concerning or constituting admissions
19 that the BruxZir mark is nongeneric; advertising and promotion of the BruxZir
20 mark and BruxZir-branded products; development, features, characteristics, and
21 indicated uses of BruxZir-branded products; use of the terms “bruxer” and “bruxer
22 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
23 facts indicating the strength of the BruxZir mark and its indication of Glidewell
24 Laboratories as a source of goods and services; facts relating to likelihood of
25 confusion between the BruxZir mark and “KDZ Bruxer”; the commercial strength
26 of the BruxZir mark; the proximity of the goods marketed under the BruxZir and
27 KDZ Bruxer marks; the channels through which BruxZir and KDZ Bruxer brand
28 goods are marketed; Keating's intent in selecting the KDZ Bruxer mark; the type of

1 goods marketed under those marks; and the degree of care typically used in
2 selecting a particular brand of such goods.

3 • Testimony of Robert Brandon concerning or constituting admissions
4 that the BruxZir mark is nongeneric; advertising and promotion of the BruxZir
5 mark and BruxZir-branded products; development, features, characteristics, and
6 indicated uses of BruxZir-branded products; use of the terms "bruxer" and "bruxer
7 crown" in the dental industry; facts indicating non-genericness of the BruxZir mark;
8 facts indicating the strength of the BruxZir mark and its indication of Glidewell
9 Laboratories as a source of goods and services; facts relating to likelihood of
10 confusion between the BruxZir mark and "KDZ Bruxer"; the commercial strength
11 of the BruxZir mark; the proximity of the goods marketed under the BruxZir and
12 KDZ Bruxer marks; the channels through which BruxZir and KDZ Bruxer brand
13 goods are marketed; Keating's intent in selecting the KDZ Bruxer mark; the type of
14 goods marketed under those marks; and the degree of care typically used in
15 selecting a particular brand of such goods.

16 • Testimony of Diane Donich concerning Keating's sales of and profits
17 from sales of product under the KDZ Bruxer mark.

18 • Reports showing Keating marketing expenses and sales. (Exs. 515,
19 943-46)

20 • Documents showing Glidewell's expenses to promote and market the
21 BruxZir mark and BruxZir-branded products. (E.g., Exs. 1550, 1564-68)

22 • Reports showing Glidewell website statistics. (Exs. 1549, 1551-52)

23 • Reports showing unit sales and revenues of BruxZir brand product.
24 (Exs. 599, 1531-32, 1560-61)

25 • List of Authorized BruxZir Labs. (Ex. 10)

26 • Exemplars of the BruxZir and KDZ Bruxer marks as they appear in the
27 marketplace. (Exs. 559, 615, 948, 1171, 1176, 1488-91)

28 • Call note report, and invoice and fax transmittal, regarding contact

1 with Dr. Le's office. (Exs. 556-57)

2 • Keating prescription forms and lab notes. (Exs. 569, 1052, 1121,
3 1139, 1142, 1160)

4 • Application for the BruxZir mark by Glidewell. (Ex. 608)

5 • Documents showing examination of the BruxZir mark by the U.S.
6 Patent and Trademark Office. (Exs. 608, 1466, 1467)

7 • Trademark Manual of Examining Procedure, 5th Ed. (excerpts). (Ex.
8 1562)

9 • Registration of the BruxZir mark by the U.S. Patent and Trademark
10 Office. (Ex. 607)

11 • Documents showing that the BruxZir mark does not exist in a crowded
12 field (E.g., Exs. 618, 619)

13 • Dictionary excerpts. (E.g., Ex. 614)

14 • Advertising, marketing, and promotional material for the BruxZir
15 mark and BruxZir-branded products. (E.g., Exs. 66-68, 562-568, 570, 575-576,
16 578-579, 610, 1055-1061)

17 • Documents evidencing third party recognition of the BruxZir mark.
18 (E.g., Exs. 580-591, 594-598)

19 • Keating advertising and marketing material for KDZ Bruxer mark and
20 BruxZir-branded products. (E.g., Exs. 570, 574)

21 • Third party advertising and marketing material for full contour
22 zirconia crowns. (E.g., Exs. 560, 1452)

23 • Documents evidencing Glidewell's efforts to protect the BruxZir mark.
24 (E.g., Exs. 141, 146-151)

25 • Documents evidencing Keating's first use of the KDZ Bruxer mark in
26 the marketplace. (E.g., Ex. 1342)

27 • Documents evidencing that neither "bruxzir crown" nor "bruxer
28 crown" were generic terms for full contour zirconia crowns prior to April 2011.

(E.g., Ex. 2140)

- Documents evidencing Glidewell's sales, revenues, and gross profit of KDZ Bruxer crowns. (E.g., Exs. 1531, 1532, 1560, 1561, 1566, 1567, 1568)

- Documents evidencing Keating's sales, revenues, and gross profit of its KDZ Bruxer crowns. (E.g., Ex. 1051)

2. Glidewell's Claim 2: False Designation of Origin Under Lanham Act, Section 43(a)

- Testimony of James Shuck concerning creation of the BruxZir mark; advertising and promotion of the BruxZir mark and BruxZir-branded products; development, features, characteristics, and indicated uses of BruxZir-branded products; use of the terms "bruxer" and "bruxer crown" in the dental industry; facts indicating non-genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark and its indication of Glidewell Laboratories as a source of goods and services; facts relating to likelihood of confusion between the BruxZir mark and "KDZ Bruxer"; the commercial strength of the BruxZir mark, the proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels through which BruxZir and KDZ Bruxer brand goods are marketed, the type of goods marketed under those marks, and the degree of care typically used in selecting a particular brand of such goods.

- Testimony of Dr. Michael DiTolla concerning creation of the BruxZir mark; advertising and promotion of the BruxZir mark and BruxZir-branded products; development, features, characteristics, and indicated uses of BruxZir-branded products; use of the terms "bruxer" and "bruxer crown" in the dental industry; generic terms for full contour zirconia crowns; treatments for patients with bruxism; facts indicating non-genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark and its indication of Glidewell Laboratories as a source of goods and services; facts relating to likelihood of confusion between the BruxZir mark and "KDZ Bruxer"; pronunciation of the terms "BruxZir" and

1 "bruxer" by dental practitioners; the commercial strength of the BruxZir mark, the
2 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
3 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
4 type of goods marketed under those marks, and the degree of care typically used in
5 selecting a particular brand of such goods. Expert testimony concerning
6 distinctiveness (and nongenericness) of the BruxZir mark, including that the mark
7 is suggestive; generic terms for full contour zirconia crowns; treatments for patients
8 with bruxism.

9 • Testimony of Nicole Fallon concerning one or more instances of actual
10 confusion.

11 • Testimony of Robin Bartolo concerning development, features,
12 characteristics, and indicated uses of BruxZir-branded products; use of the terms
13 "bruxer" and "bruxer crown" in the dental industry; facts indicating non-
14 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
15 and its indication of Glidewell Laboratories as a source of goods and services; and
16 operation of Glidewell's Authorized Labs program, Glidewell Direct, and
17 Glidewell's interactions with Authorized BruxZir Labs.

18 • Testimony of Robin Carden concerning development, features,
19 characteristics, and indicated uses of BruxZir-branded products; use of the terms
20 "bruxer" and "bruxer crown" in the dental industry; facts indicating non-
21 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
22 and its indication of Glidewell Laboratories as a source of goods and services;
23 Glidewell's interactions with Authorized BruxZir Labs and operation of Glidewell's
24 Authorized Labs program; and commercial strength of the BruxZir mark, including
25 technical and educational presentations concerning BruxZir brand product.

26 • Testimony of Rudy Ramirez concerning creation of the BruxZir mark;
27 development, features, characteristics, and indicated uses of BruxZir-branded
28 products; use of the terms "bruxer" and "bruxer crown" in the dental industry; facts

1 indicating non-genericness of the BruxZir mark; facts indicating the commercial
2 strength of the BruxZir mark and its indication of Glidewell Laboratories as a
3 source of goods and services.

4 • Testimony of Keith Allred concerning Glidewell's ownership of the
5 BruxZir mark and Trademark Reg. No. 3,739,663, and Glidewell's enforcement of
6 its rights in the BruxZir mark.

7 • Testimony of Glenn Sasaki concerning Glidewell's damages and
8 Keating's profits.

9 • Testimony of Ronald Goldstein, D.D.S. concerning the validity
10 (distinctiveness and nongenericness) of the BruxZir mark, the conceptual and
11 commercial strength of the BruxZir mark, the proximity of the goods marketed
12 under the BruxZir and KDZ Bruxer marks, the channels through which BruxZir and
13 KDZ Bruxer brand goods are marketed, the type of goods marketed under those
14 marks, the degree of care typically used in selecting a particular brand of such
15 goods, and the likelihood of confusion resulting from Keating's use of KDZ
16 Bruxer; generic terms for full contour zirconia crowns; treatments for patients with
17 bruxism

18 • Testimony of David Franklyn concerning the validity (distinctiveness
19 and nongenericness) of the BruxZir mark, the conceptual and commercial strength
20 of the BruxZir mark, the proximity of the goods marketed under the BruxZir and
21 KDZ Bruxer marks, the channels through which BruxZir and KDZ Bruxer brand
22 goods are marketed, the type of goods marketed under those marks, the degree of
23 care typically used in selecting a particular brand of such goods, and the likelihood
24 of confusion resulting from Keating's use of KDZ Bruxer.

25 • Testimony of Gregory Doneff, D.D.S. concerning the validity of the
26 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
27 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
28 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the

1 type of goods marketed under those marks, and the degree of care typically used in
2 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
3 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
4 facts indicating the strength of the BruxZir mark and its indication of Glidewell
5 Laboratories as a source of goods and services; facts relating to likelihood of
6 confusion between the BruxZir mark and “KDZ Bruxer.”

7 • Testimony of Howard Cohen, D.D.S. concerning the validity of the
8 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
9 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
10 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
11 type of goods marketed under those marks, and the degree of care typically used in
12 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
13 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
14 facts indicating the strength of the BruxZir mark and its indication of Glidewell
15 Laboratories as a source of goods and services; facts relating to likelihood of
16 confusion between the BruxZir mark and “KDZ Bruxer.”

17 • Testimony of Spencer Luke, D.M.D. concerning the validity of the
18 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
19 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
20 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
21 type of goods marketed under those marks, and the degree of care typically used in
22 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
23 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
24 facts indicating the strength of the BruxZir mark and its indication of Glidewell
25 Laboratories as a source of goods and services; facts relating to likelihood of
26 confusion between the BruxZir mark and “KDZ Bruxer.”

27 • Testimony of Stuart Newman, D.D.S. concerning the validity of the
28 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the

1 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
2 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
3 type of goods marketed under those marks, and the degree of care typically used in
4 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
5 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
6 facts indicating the strength of the BruxZir mark and its indication of Glidewell
7 Laboratories as a source of goods and services; facts relating to likelihood of
8 confusion between the BruxZir mark and “KDZ Bruxer.”

9 • Testimony of Thomas Bell, D.M.D. concerning the validity of the
10 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
11 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
12 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
13 type of goods marketed under those marks, and the degree of care typically used in
14 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
15 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
16 facts indicating the strength of the BruxZir mark and its indication of Glidewell
17 Laboratories as a source of goods and services; facts relating to likelihood of
18 confusion between the BruxZir mark and “KDZ Bruxer.”

19 • Testimony of Terence Michiels, D.D.S. concerning the validity of the
20 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
21 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
22 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
23 type of goods marketed under those marks, and the degree of care typically used in
24 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
25 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
26 facts indicating the strength of the BruxZir mark and its indication of Glidewell
27 Laboratories as a source of goods and services; facts relating to likelihood of
28 confusion between the BruxZir mark and “KDZ Bruxer.”

1 • Testimony of Kent Toca, D.D.S. concerning the validity of the
2 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
3 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
4 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
5 type of goods marketed under those marks, and the degree of care typically used in
6 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
7 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
8 facts indicating the strength of the BruxZir mark and its indication of Glidewell
9 Laboratories as a source of goods and services; facts relating to likelihood of
10 confusion between the BruxZir mark and “KDZ Bruxer.”

11 • Testimony of Dr. Michael Fanning concerning the validity of the
12 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
13 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
14 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
15 type of goods marketed under those marks, and the degree of care typically used in
16 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
17 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
18 facts indicating the strength of the BruxZir mark and its indication of Glidewell
19 Laboratories as a source of goods and services; facts relating to likelihood of
20 confusion between the BruxZir mark and “KDZ Bruxer.”

21 • Testimony of Dr. Vincent S. Cianciulli concerning the validity of the
22 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
23 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
24 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
25 type of goods marketed under those marks, and the degree of care typically used in
26 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
27 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
28 facts indicating the strength of the BruxZir mark and its indication of Glidewell

1 Laboratories as a source of goods and services; facts relating to likelihood of
2 confusion between the BruxZir mark and “KDZ Bruxer.”

3 • Testimony of Dr. Ilya Benjamin concerning the validity of the BruxZir
4 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
5 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
6 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
7 goods marketed under those marks, and the degree of care typically used in
8 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
9 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
10 facts indicating the strength of the BruxZir mark and its indication of Glidewell
11 Laboratories as a source of goods and services; facts relating to likelihood of
12 confusion between the BruxZir mark and “KDZ Bruxer.”

13 • Testimony of Dr. Dean Saiki concerning the validity of the BruxZir
14 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
15 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
16 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
17 goods marketed under those marks, and the degree of care typically used in
18 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
19 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
20 facts indicating the strength of the BruxZir mark and its indication of Glidewell
21 Laboratories as a source of goods and services; facts relating to likelihood of
22 confusion between the BruxZir mark and “KDZ Bruxer.”

23 • Testimony of Dr. Robert McNicholas concerning the validity of the
24 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
25 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
26 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
27 type of goods marketed under those marks, and the degree of care typically used in
28 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer

1 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
2 facts indicating the strength of the BruxZir mark and its indication of Glidewell
3 Laboratories as a source of goods and services; facts relating to likelihood of
4 confusion between the BruxZir mark and “KDZ Bruxer.”

5 • Testimony of Dr. Benjamin An concerning the validity of the BruxZir
6 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
7 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
8 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
9 goods marketed under those marks, and the degree of care typically used in
10 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
11 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
12 facts indicating the strength of the BruxZir mark and its indication of Glidewell
13 Laboratories as a source of goods and services; facts relating to likelihood of
14 confusion between the BruxZir mark and “KDZ Bruxer.”

15 • Testimony of Dr. Oscar Goren concerning the validity of the BruxZir
16 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
17 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
18 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
19 goods marketed under those marks, and the degree of care typically used in
20 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
21 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
22 facts indicating the strength of the BruxZir mark and its indication of Glidewell
23 Laboratories as a source of goods and services; facts relating to likelihood of
24 confusion between the BruxZir mark and “KDZ Bruxer.”

25 • Testimony of Dr. Dennis A. Gaishauer concerning the validity of the
26 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
27 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
28 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the

1 type of goods marketed under those marks, and the degree of care typically used in
2 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
3 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
4 facts indicating the strength of the BruxZir mark and its indication of Glidewell
5 Laboratories as a source of goods and services; facts relating to likelihood of
6 confusion between the BruxZir mark and “KDZ Bruxer.”

7 • Testimony of Dr. Dr. Chester A. Bizga concerning the validity of the
8 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
9 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
10 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
11 type of goods marketed under those marks, and the degree of care typically used in
12 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
13 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
14 facts indicating the strength of the BruxZir mark and its indication of Glidewell
15 Laboratories as a source of goods and services; facts relating to likelihood of
16 confusion between the BruxZir mark and “KDZ Bruxer.”

17 • Testimony of Dr. Valentine Ferraris concerning the validity of the
18 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
19 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
20 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
21 type of goods marketed under those marks, and the degree of care typically used in
22 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
23 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
24 facts indicating the strength of the BruxZir mark and its indication of Glidewell
25 Laboratories as a source of goods and services; facts relating to likelihood of
26 confusion between the BruxZir mark and “KDZ Bruxer.”

27 • Testimony of Dr. Paul Taylor concerning the validity of the BruxZir
28 mark, the conceptual and commercial strength of the BruxZir mark, the proximity

1 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
2 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
3 goods marketed under those marks, and the degree of care typically used in
4 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
5 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
6 facts indicating the strength of the BruxZir mark and its indication of Glidewell
7 Laboratories as a source of goods and services; facts relating to likelihood of
8 confusion between the BruxZir mark and “KDZ Bruxer.”

9 • Testimony of Dr. Meredith S. Esposito concerning the validity of the
10 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
11 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
12 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
13 type of goods marketed under those marks, and the degree of care typically used in
14 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
15 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
16 facts indicating the strength of the BruxZir mark and its indication of Glidewell
17 Laboratories as a source of goods and services; facts relating to likelihood of
18 confusion between the BruxZir mark and “KDZ Bruxer.”

19 • Testimony of Dr. John Griffith concerning the validity of the BruxZir
20 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
21 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
22 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
23 goods marketed under those marks, and the degree of care typically used in
24 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
25 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
26 facts indicating the strength of the BruxZir mark and its indication of Glidewell
27 Laboratories as a source of goods and services; facts relating to likelihood of
28 confusion between the BruxZir mark and “KDZ Bruxer.”

1 • Testimony of Scott Bigler concerning the validity and commercial
2 strength of the BruxZir mark, and Glidewell Direct and Glidewell's interactions
3 with Authorized BruxZir Labs.

4 • Testimony of Glenn Yamamoto concerning the validity and
5 commercial strength of the BruxZir mark, and Glidewell Direct and Glidewell's
6 interactions with Authorized BruxZir Labs.

7 • Testimony of Jacob Trachsel concerning the validity and commercial
8 strength of the BruxZir mark, and Glidewell Direct and Glidewell's interactions
9 with Authorized BruxZir Labs.

10 • Testimony of Kareen Chamberlain concerning the validity and
11 commercial strength of the BruxZir mark, and Glidewell Direct and Glidewell's
12 interactions with Authorized BruxZir Labs.

13 • Testimony of Shaun Keating concerning or constituting admissions
14 that the BruTestimony of Shaun Keating concerning or constituting admissions that
15 the BruxZir mark is nongeneric; advertising and promotion of the BruxZir mark
16 and BruxZir-branded products; development, features, characteristics, and indicated
17 uses of BruxZir-branded products; use of the terms "bruxer" and "bruxer crown" in
18 the dental industry; facts indicating non-genericness of the BruxZir mark; facts
19 indicating the strength of the BruxZir mark and its indication of Glidewell
20 Laboratories as a source of goods and services; facts relating to likelihood of
21 confusion between the BruxZir mark and "KDZ Bruxer"; the commercial strength
22 of the BruxZir mark; the proximity of the goods marketed under the BruxZir and
23 KDZ Bruxer marks; the channels through which BruxZir and KDZ Bruxer brand
24 goods are marketed; Keating's intent in selecting the KDZ Bruxer mark; the type of
25 goods marketed under those marks; and the degree of care typically used in
26 selecting a particular brand of such goods.

27 • Testimony of Robert Brandon concerning or constituting admissions
28 that the BruxZir mark is nongeneric; advertising and promotion of the BruxZir

1 mark and BruxZir-branded products; development, features, characteristics, and
2 indicated uses of BruxZir-branded products; use of the terms "bruxer" and "bruxer
3 crown" in the dental industry; facts indicating non-genericness of the BruxZir mark;
4 facts indicating the strength of the BruxZir mark and its indication of Glidewell
5 Laboratories as a source of goods and services; facts relating to likelihood of
6 confusion between the BruxZir mark and "KDZ Bruxer"; the commercial strength
7 of the BruxZir mark; the proximity of the goods marketed under the BruxZir and
8 KDZ Bruxer marks; the channels through which BruxZir and KDZ Bruxer brand
9 goods are marketed; Keating's intent in selecting the KDZ Bruxer mark; the type of
10 goods marketed under those marks; and the degree of care typically used in
11 selecting a particular brand of such goods.

- 12 • Testimony of Diane Donich concerning Keating's sales of and profits
13 from sales of product under the KDZ Bruxer mark.
- 14 • Reports showing Keating marketing expenses and sales. (Exs. 515,
15 943-46)
- 16 • Documents showing Glidewell's expenses to promote and market the
17 BruxZir mark and BruxZir-branded products. (E.g., Exs. 1550, 1564-68)
- 18 • Reports showing Glidewell website statistics. (Exs. 1549, 1551-52)
- 19 • Reports showing unit sales and revenues of BruxZir brand product.
20 (Exs. 599, 1531-32, 1560-61)
- 21 • List of Authorized BruxZir Labs. (Ex. 10)
- 22 • Exemplars of the BruxZir and KDZ Bruxer marks as they appear in the
23 marketplace. (Exs. 559, 615, 948, 1171, 1176, 1488-91)
- 24 • Call note report, and invoice and fax transmittal, regarding contact
25 with Dr. Le's office. (Exs. 556-57)
- 26 • Keating prescription forms and lab notes. (Exs. 569, 1052, 1121,
27 1139, 1142, 1160)
- 28 • Application for the BruxZir mark by Glidewell. (Ex. 608)

- 1 • Documents showing examination of the BruxZir mark by the U.S.
- 2 Patent and Trademark Office. (Exs. 608, 1466, 1467)
- 3 • Trademark Manual of Examining Procedure, 5th Ed. (excerpts). (Ex.
- 4 1562)
- 5 • Registration of the BruxZir mark by the U.S. Patent and Trademark
- 6 Office. (Ex. 607)
- 7 • Documents showing that the BruxZir mark does not exist in a crowded
- 8 field (E.g., Exs. 618, 619)
- 9 • Dictionary excerpts. (E.g., Ex. 614)
- 10 • Advertising, marketing, and promotional material for the BruxZir
- 11 mark and BruxZir-branded products. (E.g., Exs. 66-68, 562-568, 570, 575-576,
- 12 578-579, 610, 1055-1061)
- 13 • Documents evidencing third party recognition of the BruxZir mark.
- 14 (E.g., Exs. 580-591, 594-598)
- 15 • Keating advertising and marketing material for KDZ Bruxer mark and
- 16 BruxZir-branded products. (E.g., Exs. 570, 574)
- 17 • Third party advertising and marketing material for full contour
- 18 zirconia crowns. (E.g., Exs. 560, 1452)
- 19 • Documents evidencing Glidewell's efforts to protect the BruxZir mark.
- 20 (E.g., Exs. 141, 146-151)
- 21 • Documents evidencing Keating's first use of the KDZ Bruxer mark in
- 22 the marketplace. (E.g., Ex. 1342)
- 23 • Documents evidencing that neither "bruxzir crown" nor "bruxer
- 24 crown" were generic terms for full contour zirconia crowns prior to April 2011.
- 25 (E.G., Ex. 2140)
- 26 • Documents evidencing Glidewell's sales, revenues, and gross profit of
- 27 KDZ Bruxer crowns. (E.g., Exs. 1531, 1532, 1560, 1561, 1566, 1567, 1568)
- 28 • Documents evidencing Keating's sales, revenues, and gross profit of

1 its KDZ Bruxer crowns. (E.g., Ex. 1051)

2 **3. Glidewell's Claim 3: Unfair Competition Under Cal. Bus.**
3 **& Prof. Code**

4 • Testimony of James Shuck concerning creation of the BruxZir mark;
5 advertising and promotion of the BruxZir mark and BruxZir-branded products;
6 development, features, characteristics, and indicated uses of BruxZir-branded
7 products; use of the terms "bruxer" and "bruxer crown" in the dental industry; facts
8 indicating non-genericness of the BruxZir mark; facts indicating the strength of the
9 BruxZir mark and its indication of Glidewell Laboratories as a source of goods and
10 services; facts relating to likelihood of confusion between the BruxZir mark and
11 "KDZ Bruxer"; the commercial strength of the BruxZir mark, the proximity of the
12 goods marketed under the BruxZir and KDZ Bruxer marks, the channels through
13 which BruxZir and KDZ Bruxer brand goods are marketed, the type of goods
14 marketed under those marks, and the degree of care typically used in selecting a
15 particular brand of such goods.

16 • Testimony of Dr. Michael DiTolla concerning creation of the BruxZir
17 mark; advertising and promotion of the BruxZir mark and BruxZir-branded
18 products; development, features, characteristics, and indicated uses of BruxZir-
19 branded products; use of the terms "bruxer" and "bruxer crown" in the dental
20 industry; generic terms for full contour zirconia crowns; treatments for patients with
21 bruxism; facts indicating non-genericness of the BruxZir mark; facts indicating the
22 strength of the BruxZir mark and its indication of Glidewell Laboratories as a
23 source of goods and services; facts relating to likelihood of confusion between the
24 BruxZir mark and "KDZ Bruxer"; pronunciation of the terms "BruxZir" and
25 "bruxer" by dental practitioners; the commercial strength of the BruxZir mark, the
26 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
27 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
28 type of goods marketed under those marks, and the degree of care typically used in

1 selecting a particular brand of such goods. Expert testimony concerning
2 distinctiveness (and nongenericness) of the BruxZir mark, including that the mark
3 is suggestive; generic terms for full contour zirconia crowns; treatments for patients
4 with bruxism.

5 • Testimony of Nicole Fallon concerning one or more instances of actual
6 confusion.

7 • Testimony of Robin Bartolo concerning development, features,
8 characteristics, and indicated uses of BruxZir-branded products; use of the terms
9 “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
10 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
11 and its indication of Glidewell Laboratories as a source of goods and services; and
12 operation of Glidewell's Authorized Labs program, Glidewell Direct, and
13 Glidewell’s interactions with Authorized BruxZir Labs.

14 • Testimony of Robin Carden concerning development, features,
15 characteristics, and indicated uses of BruxZir-branded products; use of the terms
16 “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
17 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
18 and its indication of Glidewell Laboratories as a source of goods and services;
19 Glidewell’s interactions with Authorized BruxZir Labs and operation of Glidewell's
20 Authorized Labs program; and commercial strength of the BruxZir mark, including
21 technical and educational presentations concerning BruxZir brand product.

22 • Testimony of Rudy Ramirez concerning creation of the BruxZir mark;
23 development, features, characteristics, and indicated uses of BruxZir-branded
24 products; use of the terms “bruxer” and “bruxer crown” in the dental industry; facts
25 indicating non-genericness of the BruxZir mark; facts indicating the commercial
26 strength of the BruxZir mark and its indication of Glidewell Laboratories as a
27 source of goods and services.

28 • Testimony of Keith Allred concerning Glidewell’s ownership of the

1 BruxZir mark and Trademark Reg. No. 3,739,663, and Glidewell's enforcement of
2 its rights in the BruxZir mark.

3 • Testimony of Glenn Sasaki concerning Glidewell's damages and
4 Keating's profits.

5 • Testimony of Ronald Goldstein, D.D.S. concerning the validity
6 (distinctiveness and nongenericness) of the BruxZir mark, the conceptual and
7 commercial strength of the BruxZir mark, the proximity of the goods marketed
8 under the BruxZir and KDZ Bruxer marks, the channels through which BruxZir and
9 KDZ Bruxer brand goods are marketed, the type of goods marketed under those
10 marks, the degree of care typically used in selecting a particular brand of such
11 goods, and the likelihood of confusion resulting from Keating's use of KDZ
12 Bruxer; generic terms for full contour zirconia crowns; treatments for patients with
13 bruxism

14 • Testimony of David Franklyn concerning the validity (distinctiveness
15 and nongenericness) of the BruxZir mark, the conceptual and commercial strength
16 of the BruxZir mark, the proximity of the goods marketed under the BruxZir and
17 KDZ Bruxer marks, the channels through which BruxZir and KDZ Bruxer brand
18 goods are marketed, the type of goods marketed under those marks, the degree of
19 care typically used in selecting a particular brand of such goods, and the likelihood
20 of confusion resulting from Keating's use of KDZ Bruxer.

21 • Testimony of Gregory Doneff, D.D.S. concerning the validity of the
22 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
23 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
24 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
25 type of goods marketed under those marks, and the degree of care typically used in
26 selecting a particular brand of such goods; use of the terms "bruxer" and "bruxer
27 crown" in the dental industry; facts indicating non-genericness of the BruxZir mark;
28 facts indicating the strength of the BruxZir mark and its indication of Glidewell

1 Laboratories as a source of goods and services; facts relating to likelihood of
2 confusion between the BruxZir mark and “KDZ Bruxer.”

3 • Testimony of Howard Cohen, D.D.S. concerning the validity of the
4 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
5 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
6 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
7 type of goods marketed under those marks, and the degree of care typically used in
8 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
9 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
10 facts indicating the strength of the BruxZir mark and its indication of Glidewell
11 Laboratories as a source of goods and services; facts relating to likelihood of
12 confusion between the BruxZir mark and “KDZ Bruxer.”

13 • Testimony of Spencer Luke, D.M.D. concerning the validity of the
14 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
15 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
16 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
17 type of goods marketed under those marks, and the degree of care typically used in
18 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
19 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
20 facts indicating the strength of the BruxZir mark and its indication of Glidewell
21 Laboratories as a source of goods and services; facts relating to likelihood of
22 confusion between the BruxZir mark and “KDZ Bruxer.”

23 • Testimony of Stuart Newman, D.D.S. concerning the validity of the
24 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
25 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
26 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
27 type of goods marketed under those marks, and the degree of care typically used in
28 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer

1 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
2 facts indicating the strength of the BruxZir mark and its indication of Glidewell
3 Laboratories as a source of goods and services; facts relating to likelihood of
4 confusion between the BruxZir mark and “KDZ Bruxer.”

5 • Testimony of Thomas Bell, D.M.D. concerning the validity of the
6 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
7 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
8 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
9 type of goods marketed under those marks, and the degree of care typically used in
10 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
11 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
12 facts indicating the strength of the BruxZir mark and its indication of Glidewell
13 Laboratories as a source of goods and services; facts relating to likelihood of
14 confusion between the BruxZir mark and “KDZ Bruxer.”

15 • Testimony of Terence Michiels, D.D.S. concerning the validity of the
16 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
17 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
18 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
19 type of goods marketed under those marks, and the degree of care typically used in
20 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
21 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
22 facts indicating the strength of the BruxZir mark and its indication of Glidewell
23 Laboratories as a source of goods and services; facts relating to likelihood of
24 confusion between the BruxZir mark and “KDZ Bruxer.”

25 • Testimony of Kent Toca, D.D.S. concerning the validity of the
26 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
27 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
28 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the

1 type of goods marketed under those marks, and the degree of care typically used in
2 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
3 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
4 facts indicating the strength of the BruxZir mark and its indication of Glidewell
5 Laboratories as a source of goods and services; facts relating to likelihood of
6 confusion between the BruxZir mark and “KDZ Bruxer.”

7 • Testimony of Dr. Michael Fanning concerning the validity of the
8 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
9 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
10 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
11 type of goods marketed under those marks, and the degree of care typically used in
12 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
13 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
14 facts indicating the strength of the BruxZir mark and its indication of Glidewell
15 Laboratories as a source of goods and services; facts relating to likelihood of
16 confusion between the BruxZir mark and “KDZ Bruxer.”

17 • Testimony of Dr. Vincent S. Cianciulli concerning the validity of the
18 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
19 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
20 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
21 type of goods marketed under those marks, and the degree of care typically used in
22 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
23 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
24 facts indicating the strength of the BruxZir mark and its indication of Glidewell
25 Laboratories as a source of goods and services; facts relating to likelihood of
26 confusion between the BruxZir mark and “KDZ Bruxer.”

27 • Testimony of Dr. Ilya Benjamin concerning the validity of the BruxZir
28 mark, the conceptual and commercial strength of the BruxZir mark, the proximity

1 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
2 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
3 goods marketed under those marks, and the degree of care typically used in
4 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
5 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
6 facts indicating the strength of the BruxZir mark and its indication of Glidewell
7 Laboratories as a source of goods and services; facts relating to likelihood of
8 confusion between the BruxZir mark and “KDZ Bruxer.”

9 • Testimony of Dr. Dean Saiki concerning the validity of the BruxZir
10 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
11 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
12 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
13 goods marketed under those marks, and the degree of care typically used in
14 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
15 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
16 facts indicating the strength of the BruxZir mark and its indication of Glidewell
17 Laboratories as a source of goods and services; facts relating to likelihood of
18 confusion between the BruxZir mark and “KDZ Bruxer.”

19 • Testimony of Dr. Robert McNicholas concerning the validity of the
20 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
21 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
22 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
23 type of goods marketed under those marks, and the degree of care typically used in
24 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
25 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
26 facts indicating the strength of the BruxZir mark and its indication of Glidewell
27 Laboratories as a source of goods and services; facts relating to likelihood of
28 confusion between the BruxZir mark and “KDZ Bruxer.”

1 • Testimony of Dr. Benjamin An concerning the validity of the BruxZir
2 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
3 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
4 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
5 goods marketed under those marks, and the degree of care typically used in
6 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
7 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
8 facts indicating the strength of the BruxZir mark and its indication of Glidewell
9 Laboratories as a source of goods and services; facts relating to likelihood of
10 confusion between the BruxZir mark and “KDZ Bruxer.”

11 • Testimony of Dr. Oscar Goren concerning the validity of the BruxZir
12 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
13 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
14 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
15 goods marketed under those marks, and the degree of care typically used in
16 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
17 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
18 facts indicating the strength of the BruxZir mark and its indication of Glidewell
19 Laboratories as a source of goods and services; facts relating to likelihood of
20 confusion between the BruxZir mark and “KDZ Bruxer.”

21 • Testimony of Dr. Dennis A. Gaishauer concerning the validity of the
22 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
23 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
24 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
25 type of goods marketed under those marks, and the degree of care typically used in
26 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
27 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
28 facts indicating the strength of the BruxZir mark and its indication of Glidewell

1 Laboratories as a source of goods and services; facts relating to likelihood of
2 confusion between the BruxZir mark and “KDZ Bruxer.”

3 • Testimony of Dr. Dr. Chester A. Bizga concerning the validity of the
4 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
5 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
6 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
7 type of goods marketed under those marks, and the degree of care typically used in
8 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
9 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
10 facts indicating the strength of the BruxZir mark and its indication of Glidewell
11 Laboratories as a source of goods and services; facts relating to likelihood of
12 confusion between the BruxZir mark and “KDZ Bruxer.”

13 • Testimony of Dr. Valentine Ferraris concerning the validity of the
14 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
15 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
16 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
17 type of goods marketed under those marks, and the degree of care typically used in
18 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
19 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
20 facts indicating the strength of the BruxZir mark and its indication of Glidewell
21 Laboratories as a source of goods and services; facts relating to likelihood of
22 confusion between the BruxZir mark and “KDZ Bruxer.”

23 • Testimony of Dr. Paul Taylor concerning the validity of the BruxZir
24 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
25 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
26 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
27 goods marketed under those marks, and the degree of care typically used in
28 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer

1 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
2 facts indicating the strength of the BruxZir mark and its indication of Glidewell
3 Laboratories as a source of goods and services; facts relating to likelihood of
4 confusion between the BruxZir mark and “KDZ Bruxer.”

5 • Testimony of Dr. Meredith S. Esposito concerning the validity of the
6 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
7 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
8 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
9 type of goods marketed under those marks, and the degree of care typically used in
10 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
11 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
12 facts indicating the strength of the BruxZir mark and its indication of Glidewell
13 Laboratories as a source of goods and services; facts relating to likelihood of
14 confusion between the BruxZir mark and “KDZ Bruxer.”

15 • Testimony of Dr. John Griffith concerning the validity of the BruxZir
16 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
17 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
18 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
19 goods marketed under those marks, and the degree of care typically used in
20 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
21 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
22 facts indicating the strength of the BruxZir mark and its indication of Glidewell
23 Laboratories as a source of goods and services; facts relating to likelihood of
24 confusion between the BruxZir mark and “KDZ Bruxer.”

25 • Testimony of Scott Bigler concerning the validity and commercial
26 strength of the BruxZir mark, and Glidewell Direct and Glidewell’s interactions
27 with Authorized BruxZir Labs.

28 • Testimony of Glenn Yamamoto concerning the validity and

1 commercial strength of the BruxZir mark, and Glidewell Direct and Glidewell's
2 interactions with Authorized BruxZir Labs.

3 • Testimony of Jacob Trachsel concerning the validity and commercial
4 strength of the BruxZir mark, and Glidewell Direct and Glidewell's interactions
5 with Authorized BruxZir Labs.

6 • Testimony of Kareen Chamberlain concerning the validity and
7 commercial strength of the BruxZir mark, and Glidewell Direct and Glidewell's
8 interactions with Authorized BruxZir Labs.

9 • Testimony of Shaun Keating concerning or constituting admissions
10 that the BruxZir mark is nongeneric; advertising and promotion of the BruxZir
11 mark and BruxZir-branded products; development, features, characteristics, and
12 indicated uses of BruxZir-branded products; use of the terms "bruxer" and "bruxer
13 crown" in the dental industry; facts indicating non-genericness of the BruxZir mark;
14 facts indicating the strength of the BruxZir mark and its indication of Glidewell
15 Laboratories as a source of goods and services; facts relating to likelihood of
16 confusion between the BruxZir mark and "KDZ Bruxer"; the commercial strength
17 of the BruxZir mark; the proximity of the goods marketed under the BruxZir and
18 KDZ Bruxer marks; the channels through which BruxZir and KDZ Bruxer brand
19 goods are marketed; Keating's intent in selecting the KDZ Bruxer mark; the type of
20 goods marketed under those marks; and the degree of care typically used in
21 selecting a particular brand of such goods.

22 • Testimony of Robert Brandon concerning or constituting admissions
23 that the BruxZir mark is nongeneric; advertising and promotion of the BruxZir
24 mark and BruxZir-branded products; development, features, characteristics, and
25 indicated uses of BruxZir-branded products; use of the terms "bruxer" and "bruxer
26 crown" in the dental industry; facts indicating non-genericness of the BruxZir mark;
27 facts indicating the strength of the BruxZir mark and its indication of Glidewell
28 Laboratories as a source of goods and services; facts relating to likelihood of

1 confusion between the BruxZir mark and "KDZ Bruxer"; the commercial strength
2 of the BruxZir mark; the proximity of the goods marketed under the BruxZir and
3 KDZ Bruxer marks; the channels through which BruxZir and KDZ Bruxer brand
4 goods are marketed; Keating's intent in selecting the KDZ Bruxer mark; the type of
5 goods marketed under those marks; and the degree of care typically used in
6 selecting a particular brand of such goods.

7 • Testimony of Diane Donich concerning Keating's sales of and profits
8 from sales of product under the KDZ Bruxer mark.

9 • Reports showing Keating marketing expenses and sales. (Exs. 515,
10 943-46)

11 • Documents showing Glidewell's expenses to promote and market the
12 BruxZir mark and BruxZir-branded products. (E.g., Exs. 1550, 1564-68)

13 • Reports showing Glidewell website statistics. (Exs. 1549, 1551-52)

14 • Reports showing unit sales and revenues of BruxZir brand product.
15 (Exs. 599, 1531-32, 1560-61)

16 • List of Authorized BruxZir Labs. (Ex. 10)

17 • Exemplars of the BruxZir and KDZ Bruxer marks as they appear in the
18 marketplace. (Exs. 559, 615, 948, 1171, 1176, 1488-91)

19 • Call note report, and invoice and fax transmittal, regarding contact
20 with Dr. Le's office. (Exs. 556-57)

21 • Keating prescription forms and lab notes. (Exs. 569, 1052, 1121,
22 1139, 1142, 1160)

23 • Application for the BruxZir mark by Glidewell. (Ex. 608)

24 • Documents showing examination of the BruxZir mark by the U.S.
25 Patent and Trademark Office. (Exs. 608, 1466, 1467)

26 • Trademark Manual of Examining Procedure, 5th Ed. (excerpts). (Ex.
27 1562)

28 • Registration of the BruxZir mark by the U.S. Patent and Trademark

1 Office. (Ex. 607)

2 • Documents showing that the BruxZir mark does not exist in a crowded
3 field (E.g., Exs. 618, 619)

4 • Dictionary excerpts. (E.g., Ex. 614)

5 • Advertising, marketing, and promotional material for the BruxZir
6 mark and BruxZir-branded products. (E.g., Exs. 66-68, 562-568, 570, 575-576,
7 578-579, 610, 1055-1061)

8 • Documents evidencing third party recognition of the BruxZir mark.
9 (E.g., Exs. 580-591, 594-598)

10 • Keating advertising and marketing material for KDZ Bruxer mark and
11 BruxZir-branded products. (E.g., Exs. 570, 574)

12 • Third party advertising and marketing material for full contour
13 zirconia crowns. (E.g., Exs. 560, 1452)

14 • Documents evidencing Glidewell's efforts to protect the BruxZir mark.
15 (E.g., Exs. 141, 146-151)

16 • Documents evidencing Keating's first use of the KDZ Bruxer mark in
17 the marketplace. (E.g., Ex. 1342)

18 • Documents evidencing that neither "bruxzir crown" nor "bruxer
19 crown" were generic terms for full contour zirconia crowns prior to April 2011.
20 (E.G., Ex. 2140)

21 • Documents evidencing Glidewell's sales, revenues, and gross profit of
22 KDZ Bruxer crowns. (E.g., Exs. 1531, 1532, 1560, 1561, 1566, 1567, 1568)

23 • Documents evidencing Keating's sales, revenues, and gross profit of
24 its KDZ Bruxer crowns. (E.g., Ex. 1051)

25 **II. KEATING'S COUNTERCLAIMS AND AFFIRMATIVE DEFENSES**

26 **A. Summary Statement of the Counterclaims and Affirmative**
27 **Defenses Keating has Pleaded and Plans to Pursue**

28 Counterclaim 1: Declaratory judgment that KDZ Bruxer does not infringe

1 Glidewell's BruxZir trademark.

2 Counterclaim 2: Glidewell's actions constitute unfair competition in
3 violation of Cal. Bus. & Prof. Code § 17200 et seq.

4 Counterclaim 3: Glidewell's actions constitute misuse of trademark.

5 Counterclaim 4: Glidewell's Trademark Reg. No. 3,739,663 should be
6 cancelled.

7 First Affirmative Defense: Glidewell's trademark is invalid or unenforceable
8 because it is a generic or descriptive term.

9 Second Affirmative Defense: There is no likelihood of confusion between
10 Glidewell's BruxZir trademark and KDZ Bruxer.

11 Third Affirmative Defense: Glidewell is estopped from asserting that any
12 rights that it may have in the trademark BruxZir are so broad as to cover or include
13 competitors' use of the words Brux or Bruxer within those competitors' trademarks.

14 Fourth Affirmative Defense: Glidewell's attempts to enforce its BruxZir
15 trademark constitute misuse of a trademark, unclean hands, and unfair competition.

16 Fifth Affirmative Defense: Keating's use of the terms "bruxer" and/or
17 "bruxzir" constitutes fair use.

18 **B. Elements Required to Establish Keating's Counterclaims and**
19 **Affirmative Defenses**

20 **1. Keating's Counterclaim 1: Declaratory Judgment of Non-**
21 **Infringement**

22 a. BruxZir is not a valid, protectable trademark; or
23 b. Glidewell does not own the BruxZir trademark; or
24 c. Keating's use of KDZ Bruxer, without Glidewell's
25 consent, is not likely to cause consumer confusion.

26 *See Ninth Circuit Manual of Model Civil Jury Instructions No. 15.5; Rearden*
27 *LLC v. Rearden Commerce, Inc.*, 683 F.3d 1190, 1202 (9th Cir. 2012); *Brookfield*
28 *Communications, Inc. v. West Coast Entertainment Corp.*, 174 F.3d 1036, 1046

(9th Cir. 1999).

2. Keating's Counterclaim 2: Unfair Competition in Violation of Cal. Bus. & Prof. Code § 17200 et seq.

a. Glidewell's actions constitute an unlawful, unfair or fraudulent business act or practice, or unfair, deceptive, untrue or misleading advertising; and

b. Keating has suffered injury in fact and lost money or property as a result of the unfair competition.

See Cal. Bus. & Prof. Code §§ 17200, 17204.

3. Keating's Counterclaim 3: Glidewell's Actions Constitute Misuse of Trademark

a. This is not a proper claim for affirmative relief and elements to prove this claim do not exist.

See Juno Online Services v. Juno Lighting, Inc., 979 F.Supp. 684 (N.D. Ill. 1997); 6 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition (4th ed. 2010) § 31:44.

4. Keating's Counterclaim 4: Glidewell's Federally Registered Trademark No. 3,739,663 Should be Cancelled

a. The registration for the BruxZir mark should be cancelled because the primary significance of the registered BruxZir mark to the relevant public is as the generic name for the goods or services for which it is registered.

See 15 U.S.C. § 1064(3); *See* Ninth Circuit Manual of Model Civil Jury Instructions Nos. 15.9.

b. The registration for the BruxZir mark should be cancelled because the BruxZir mark, if descriptive, has not attained secondary meaning (i.e., the primary significance of the BruxZir mark in the minds of the prospective consumers is to identify the product itself rather than to identify a single source, regardless of whether consumers know who or what the source is).

See Ninth Circuit Manual of Model Civil Jury Instructions Nos. 15.10, 15.17.

5. **Keating's First Affirmative Defense: Glidewell's Trademark is Invalid as it is Generic or Descriptive**

a. The registered BruxZir mark is invalid because the primary significance of the registered BruxZir mark to the relevant public is as the generic name for the goods or services for which it is registered.

See 15 U.S.C. § 1064(3); See Ninth Circuit Manual of Model Civil Jury Instructions Nos. 15.9.

b. The registered BruxZir mark is invalid because the BruxZir mark, if descriptive, has not attained secondary meaning (i.e., the primary significance of the BruxZir mark in the minds of the prospective consumers is to identify the product itself rather than to identify a single source, regardless of whether consumers know who or what the source is).

See Ninth Circuit Manual of Model Civil Jury Instructions Nos. 15.10, 15.17.

6. **Keating's Second Affirmative Defense: No Likelihood of Confusion**

a. Keating's use of KDZ Bruxer, without Glidewell's consent, is not likely to cause consumer confusion.

See Ninth Circuit Manual of Model Civil Jury Instructions Nos. 15.5.

7. **Keating's Third Affirmative Defense: Glidewell is estopped from asserting that any rights that it may have in the trademark BruxZir are so broad as to cover or include competitors' use of the words Brux or Bruxer within those competitors' trademarks**

- a. Glidewell must be apprised of the facts;
- b. Glidewell must intend that its conduct shall be acted upon, or must so act that Keating has a right to believe it was so intended;
- c. Keating must be ignorant of the true state of facts; and

d. Keating must rely upon the conduct to his injury.

See Cox v. Ocean View Hotel Corp., 533 F.3d 1114, 1123 (9th Cir. 2008).

8. Keating's Fourth Affirmative Defense: Misuse of Trademark/Unclean Hands/Unfair Competition

a. Glidewell has violated conscience, good faith, or other equitable principles in its prior conduct, or has dirtied its hands in acquiring the right presently asserted;

b. Glidewell's misconduct relates directly to the transaction concerning which the complaint is made.

See Dollar Systems, Inc. v. Avcar Leasing Systems, Inc., 890 F.2d 165, 173 (9th Cir. 1989); *KEMA, Inc. v. Koperwhats*, 658 F.Supp.2d 1022, 1035-36 (N.D. Cal. 2009) (defense of misuse of trademark is redundant with unclean hands).

9. Keating's Fifth Affirmative Defense: Fair Use

a. Keating used the mark other than to distinguish Keating's goods from Glidewell's and to indicate the source of Keating's goods;

b. Keating used the BruxZir mark fairly and in good faith;
and

c. Keating used the BruxZir mark only to describe Keating's goods as those of Keating's and not at all to describe Glidewell's product.

See Ninth Circuit Manual of Model Civil Jury Instructions No. 15.22.

C. Brief Description of Key Evidence in Opposition to Keating's Counterclaims and Affirmative Defenses

Plaintiff identifies at least the following key evidence in opposition to Keating's counterclaims and affirmative defenses. Plaintiff reserves the right to enlarge or otherwise modify this list.

1. Keating's Counterclaim 1: Declaratory Judgment re Non-Infringement

- Testimony of James Shuck concerning creation of the BruxZir mark;

1 advertising and promotion of the BruxZir mark and BruxZir-branded products;
2 development, features, characteristics, and indicated uses of BruxZir-branded
3 products; use of the terms “bruxer” and “bruxer crown” in the dental industry; facts
4 indicating non-genericness of the BruxZir mark; facts indicating the strength of the
5 BruxZir mark and its indication of Glidewell Laboratories as a source of goods and
6 services; facts relating to likelihood of confusion between the BruxZir mark and
7 “KDZ Bruxer”; the commercial strength of the BruxZir mark, the proximity of the
8 goods marketed under the BruxZir and KDZ Bruxer marks, the channels through
9 which BruxZir and KDZ Bruxer brand goods are marketed, the type of goods
10 marketed under those marks, and the degree of care typically used in selecting a
11 particular brand of such goods.

12 • Testimony of Dr. Michael DiTolla concerning creation of the BruxZir
13 mark; advertising and promotion of the BruxZir mark and BruxZir-branded
14 products; development, features, characteristics, and indicated uses of BruxZir-
15 branded products; use of the terms “bruxer” and “bruxer crown” in the dental
16 industry; generic terms for full contour zirconia crowns; treatments for patients with
17 bruxism; facts indicating non-genericness of the BruxZir mark; facts indicating the
18 strength of the BruxZir mark and its indication of Glidewell Laboratories as a
19 source of goods and services; facts relating to likelihood of confusion between the
20 BruxZir mark and “KDZ Bruxer”; pronunciation of the terms “BruxZir” and
21 “bruxer” by dental practitioners; the commercial strength of the BruxZir mark, the
22 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
23 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
24 type of goods marketed under those marks, and the degree of care typically used in
25 selecting a particular brand of such goods. Expert testimony concerning
26 distinctiveness (and nongenericness) of the BruxZir mark, including that the mark
27 is suggestive; generic terms for full contour zirconia crowns; treatments for patients
28 with bruxism.

1 • Testimony of Nicole Fallon concerning one or more instances of actual
2 confusion.

3 • Testimony of Robin Bartolo concerning development, features,
4 characteristics, and indicated uses of BruxZir-branded products; use of the terms
5 “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
6 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
7 and its indication of Glidewell Laboratories as a source of goods and services; and
8 operation of Glidewell's Authorized Labs program, Glidewell Direct, and
9 Glidewell’s interactions with Authorized BruxZir Labs.

10 • Testimony of Robin Carden concerning development, features,
11 characteristics, and indicated uses of BruxZir-branded products; use of the terms
12 “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
13 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
14 and its indication of Glidewell Laboratories as a source of goods and services;
15 Glidewell’s interactions with Authorized BruxZir Labs and operation of Glidewell's
16 Authorized Labs program; and commercial strength of the BruxZir mark, including
17 technical and educational presentations concerning BruxZir brand product.

18 • Testimony of Rudy Ramirez concerning creation of the BruxZir mark;
19 development, features, characteristics, and indicated uses of BruxZir-branded
20 products; use of the terms “bruxer” and “bruxer crown” in the dental industry; facts
21 indicating non-genericness of the BruxZir mark; facts indicating the commercial
22 strength of the BruxZir mark and its indication of Glidewell Laboratories as a
23 source of goods and services.

24 • Testimony of Keith Allred concerning Glidewell’s ownership of the
25 BruxZir mark and Trademark Reg. No. 3,739,663, and Glidewell’s enforcement of
26 its rights in the BruxZir mark.

27 • Testimony of Glenn Sasaki concerning Glidewell’s damages and
28 Keating’s profits.

1 • Testimony of Ronald Goldstein, D.D.S. concerning the validity
2 (distinctiveness and nongenericness) of the BruxZir mark, the conceptual and
3 commercial strength of the BruxZir mark, the proximity of the goods marketed
4 under the BruxZir and KDZ Bruxer marks, the channels through which BruxZir and
5 KDZ Bruxer brand goods are marketed, the type of goods marketed under those
6 marks, the degree of care typically used in selecting a particular brand of such
7 goods, and the likelihood of confusion resulting from Keating's use of KDZ
8 Bruxer; generic terms for full contour zirconia crowns; treatments for patients with
9 bruxism

10 • Testimony of David Franklyn concerning the validity (distinctiveness
11 and nongenericness) of the BruxZir mark, the conceptual and commercial strength
12 of the BruxZir mark, the proximity of the goods marketed under the BruxZir and
13 KDZ Bruxer marks, the channels through which BruxZir and KDZ Bruxer brand
14 goods are marketed, the type of goods marketed under those marks, the degree of
15 care typically used in selecting a particular brand of such goods, and the likelihood
16 of confusion resulting from Keating's use of KDZ Bruxer.

17 • Testimony of Gregory Doneff, D.D.S. concerning the validity of the
18 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
19 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
20 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
21 type of goods marketed under those marks, and the degree of care typically used in
22 selecting a particular brand of such goods; use of the terms "bruxer" and "bruxer
23 crown" in the dental industry; facts indicating non-genericness of the BruxZir mark;
24 facts indicating the strength of the BruxZir mark and its indication of Glidewell
25 Laboratories as a source of goods and services; facts relating to likelihood of
26 confusion between the BruxZir mark and "KDZ Bruxer."

27 • Testimony of Howard Cohen, D.D.S. concerning the validity of the
28 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the

1 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
2 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
3 type of goods marketed under those marks, and the degree of care typically used in
4 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
5 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
6 facts indicating the strength of the BruxZir mark and its indication of Glidewell
7 Laboratories as a source of goods and services; facts relating to likelihood of
8 confusion between the BruxZir mark and “KDZ Bruxer.”

9 • Testimony of Spencer Luke, D.M.D. concerning the validity of the
10 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
11 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
12 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
13 type of goods marketed under those marks, and the degree of care typically used in
14 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
15 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
16 facts indicating the strength of the BruxZir mark and its indication of Glidewell
17 Laboratories as a source of goods and services; facts relating to likelihood of
18 confusion between the BruxZir mark and “KDZ Bruxer.”

19 • Testimony of Stuart Newman, D.D.S. concerning the validity of the
20 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
21 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
22 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
23 type of goods marketed under those marks, and the degree of care typically used in
24 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
25 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
26 facts indicating the strength of the BruxZir mark and its indication of Glidewell
27 Laboratories as a source of goods and services; facts relating to likelihood of
28 confusion between the BruxZir mark and “KDZ Bruxer.”

1 • Testimony of Thomas Bell, D.M.D. concerning the validity of the
2 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
3 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
4 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
5 type of goods marketed under those marks, and the degree of care typically used in
6 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
7 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
8 facts indicating the strength of the BruxZir mark and its indication of Glidewell
9 Laboratories as a source of goods and services; facts relating to likelihood of
10 confusion between the BruxZir mark and “KDZ Bruxer.”

11 • Testimony of Terence Michiels, D.D.S. concerning the validity of the
12 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
13 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
14 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
15 type of goods marketed under those marks, and the degree of care typically used in
16 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
17 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
18 facts indicating the strength of the BruxZir mark and its indication of Glidewell
19 Laboratories as a source of goods and services; facts relating to likelihood of
20 confusion between the BruxZir mark and “KDZ Bruxer.”

21 • Testimony of Kent Toca, D.D.S. concerning the validity of the
22 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
23 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
24 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
25 type of goods marketed under those marks, and the degree of care typically used in
26 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
27 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
28 facts indicating the strength of the BruxZir mark and its indication of Glidewell

1 Laboratories as a source of goods and services; facts relating to likelihood of
2 confusion between the BruxZir mark and “KDZ Bruxer.”

3 • Testimony of Dr. Michael Fanning concerning the validity of the
4 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
5 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
6 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
7 type of goods marketed under those marks, and the degree of care typically used in
8 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
9 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
10 facts indicating the strength of the BruxZir mark and its indication of Glidewell
11 Laboratories as a source of goods and services; facts relating to likelihood of
12 confusion between the BruxZir mark and “KDZ Bruxer.”

13 • Testimony of Dr. Vincent S. Cianciulli concerning the validity of the
14 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
15 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
16 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
17 type of goods marketed under those marks, and the degree of care typically used in
18 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
19 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
20 facts indicating the strength of the BruxZir mark and its indication of Glidewell
21 Laboratories as a source of goods and services; facts relating to likelihood of
22 confusion between the BruxZir mark and “KDZ Bruxer.”

23 • Testimony of Dr. Ilya Benjamin concerning the validity of the BruxZir
24 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
25 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
26 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
27 goods marketed under those marks, and the degree of care typically used in
28 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer

1 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
2 facts indicating the strength of the BruxZir mark and its indication of Glidewell
3 Laboratories as a source of goods and services; facts relating to likelihood of
4 confusion between the BruxZir mark and “KDZ Bruxer.”

5 • Testimony of Dr. Dean Saiki concerning the validity of the BruxZir
6 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
7 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
8 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
9 goods marketed under those marks, and the degree of care typically used in
10 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
11 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
12 facts indicating the strength of the BruxZir mark and its indication of Glidewell
13 Laboratories as a source of goods and services; facts relating to likelihood of
14 confusion between the BruxZir mark and “KDZ Bruxer.”

15 • Testimony of Dr. Robert McNicholas concerning the validity of the
16 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
17 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
18 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
19 type of goods marketed under those marks, and the degree of care typically used in
20 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
21 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
22 facts indicating the strength of the BruxZir mark and its indication of Glidewell
23 Laboratories as a source of goods and services; facts relating to likelihood of
24 confusion between the BruxZir mark and “KDZ Bruxer.”

25 • Testimony of Dr. Benjamin An concerning the validity of the BruxZir
26 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
27 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
28 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of

1 goods marketed under those marks, and the degree of care typically used in
2 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
3 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
4 facts indicating the strength of the BruxZir mark and its indication of Glidewell
5 Laboratories as a source of goods and services; facts relating to likelihood of
6 confusion between the BruxZir mark and “KDZ Bruxer.”

7 • Testimony of Dr. Oscar Goren concerning the validity of the BruxZir
8 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
9 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
10 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
11 goods marketed under those marks, and the degree of care typically used in
12 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
13 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
14 facts indicating the strength of the BruxZir mark and its indication of Glidewell
15 Laboratories as a source of goods and services; facts relating to likelihood of
16 confusion between the BruxZir mark and “KDZ Bruxer.”

17 • Testimony of Dr. Dennis A. Gaishauer concerning the validity of the
18 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
19 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
20 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
21 type of goods marketed under those marks, and the degree of care typically used in
22 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
23 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
24 facts indicating the strength of the BruxZir mark and its indication of Glidewell
25 Laboratories as a source of goods and services; facts relating to likelihood of
26 confusion between the BruxZir mark and “KDZ Bruxer.”

27 • Testimony of Dr. Dr. Chester A. Bizga concerning the validity of the
28 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the

1 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
2 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
3 type of goods marketed under those marks, and the degree of care typically used in
4 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
5 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
6 facts indicating the strength of the BruxZir mark and its indication of Glidewell
7 Laboratories as a source of goods and services; facts relating to likelihood of
8 confusion between the BruxZir mark and “KDZ Bruxer.”

9 • Testimony of Dr. Valentine Ferraris concerning the validity of the
10 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
11 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
12 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
13 type of goods marketed under those marks, and the degree of care typically used in
14 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
15 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
16 facts indicating the strength of the BruxZir mark and its indication of Glidewell
17 Laboratories as a source of goods and services; facts relating to likelihood of
18 confusion between the BruxZir mark and “KDZ Bruxer.”

19 • Testimony of Dr. Paul Taylor concerning the validity of the BruxZir
20 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
21 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
22 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
23 goods marketed under those marks, and the degree of care typically used in
24 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
25 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
26 facts indicating the strength of the BruxZir mark and its indication of Glidewell
27 Laboratories as a source of goods and services; facts relating to likelihood of
28 confusion between the BruxZir mark and “KDZ Bruxer.”

1 • Testimony of Dr. Meredith S. Esposito concerning the validity of the
2 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
3 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
4 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
5 type of goods marketed under those marks, and the degree of care typically used in
6 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
7 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
8 facts indicating the strength of the BruxZir mark and its indication of Glidewell
9 Laboratories as a source of goods and services; facts relating to likelihood of
10 confusion between the BruxZir mark and “KDZ Bruxer.”

11 • Testimony of Dr. John Griffith concerning the validity of the BruxZir
12 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
13 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
14 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
15 goods marketed under those marks, and the degree of care typically used in
16 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
17 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
18 facts indicating the strength of the BruxZir mark and its indication of Glidewell
19 Laboratories as a source of goods and services; facts relating to likelihood of
20 confusion between the BruxZir mark and “KDZ Bruxer.”

21 • Testimony of Scott Bigler concerning the validity and commercial
22 strength of the BruxZir mark, and Glidewell Direct and Glidewell’s interactions
23 with Authorized BruxZir Labs.

24 • Testimony of Glenn Yamamoto concerning the validity and
25 commercial strength of the BruxZir mark, and Glidewell Direct and Glidewell’s
26 interactions with Authorized BruxZir Labs.

27 • Testimony of Jacob Trachsel concerning the validity and commercial
28 strength of the BruxZir mark, and Glidewell Direct and Glidewell’s interactions

1 with Authorized BruxZir Labs.

2 • Testimony of Kareen Chamberlain concerning the validity and
3 commercial strength of the BruxZir mark, and Glidewell Direct and Glidewell's
4 interactions with Authorized BruxZir Labs.

5 • Testimony of Shaun Keating concerning or constituting admissions
6 that the BruxZir mark is nongeneric; advertising and promotion of the BruxZir
7 mark and BruxZir-branded products; development, features, characteristics, and
8 indicated uses of BruxZir-branded products; use of the terms "bruxer" and "bruxer
9 crown" in the dental industry; facts indicating non-genericness of the BruxZir mark;
10 facts indicating the strength of the BruxZir mark and its indication of Glidewell
11 Laboratories as a source of goods and services; facts relating to likelihood of
12 confusion between the BruxZir mark and "KDZ Bruxer"; the commercial strength
13 of the BruxZir mark; the proximity of the goods marketed under the BruxZir and
14 KDZ Bruxer marks; the channels through which BruxZir and KDZ Bruxer brand
15 goods are marketed; Keating's intent in selecting the KDZ Bruxer mark; the type of
16 goods marketed under those marks; and the degree of care typically used in
17 selecting a particular brand of such goods.

18 • Testimony of Robert Brandon concerning or constituting admissions
19 that the BruxZir mark is nongeneric; advertising and promotion of the BruxZir
20 mark and BruxZir-branded products; development, features, characteristics, and
21 indicated uses of BruxZir-branded products; use of the terms "bruxer" and "bruxer
22 crown" in the dental industry; facts indicating non-genericness of the BruxZir mark;
23 facts indicating the strength of the BruxZir mark and its indication of Glidewell
24 Laboratories as a source of goods and services; facts relating to likelihood of
25 confusion between the BruxZir mark and "KDZ Bruxer"; the commercial strength
26 of the BruxZir mark; the proximity of the goods marketed under the BruxZir and
27 KDZ Bruxer marks; the channels through which BruxZir and KDZ Bruxer brand
28 goods are marketed; Keating's intent in selecting the KDZ Bruxer mark; the type of

1 goods marketed under those marks; and the degree of care typically used in
2 selecting a particular brand of such goods.

3 • Testimony of Diane Donich concerning Keating's sales of and profits
4 from sales of product under the KDZ Bruxer mark.

5 • Reports showing Keating marketing expenses and sales. (Exs. 515,
6 943-46)

7 • Documents showing Glidewell's expenses to promote and market the
8 BruxZir mark and BruxZir-branded products. (E.g., Exs. 1550, 1564-68)

9 • Reports showing Glidewell website statistics. (Exs. 1549, 1551-52)

10 • Reports showing unit sales and revenues of BruxZir brand product.
11 (Exs. 599, 1531-32, 1560-61)

12 • List of Authorized BruxZir Labs. (Ex. 10)

13 • Exemplars of the BruxZir and KDZ Bruxer marks as they appear in the
14 marketplace. (Exs. 559, 615, 948, 1171, 1176, 1488-91)

15 • Call note report, and invoice and fax transmittal, regarding contact
16 with Dr. Le's office. (Exs. 556-57)

17 • Keating prescription forms and lab notes. (Exs. 569, 1052, 1121,
18 1139, 1142, 1160)

19 • Application for the BruxZir mark by Glidewell. (Ex. 608)

20 • Documents showing examination of the BruxZir mark by the U.S.
21 Patent and Trademark Office. (Exs. 608, 1466, 1467)

22 • Trademark Manual of Examining Procedure, 5th Ed. (excerpts). (Ex.
23 1562)

24 • Registration of the BruxZir mark by the U.S. Patent and Trademark
25 Office. (Ex. 607)

26 • Documents showing that the BruxZir mark does not exist in a crowded
27 field (E.g., Exs. 618, 619)

28 • Dictionary excerpts. (E.g., Ex. 614)

- 1 • Advertising, marketing, and promotional material for the BruxZir
- 2 mark and BruxZir-branded products. (E.g., Exs. 66-68, 562-568, 570, 575-576,
- 3 578-579, 610, 1055-1061)
- 4 • Documents evidencing third party recognition of the BruxZir mark.
- 5 (E.g., Exs. 580-591, 594-598)
- 6 • Keating advertising and marketing material for KDZ Bruxer mark and
- 7 BruxZir-branded products. (E.g., Exs. 570, 574)
- 8 • Third party advertising and marketing material for full contour
- 9 zirconia crowns. (E.g., Exs. 560, 1452)
- 10 • Documents evidencing Glidewell's efforts to protect the BruxZir mark.
- 11 (E.g., Exs. 141, 146-151)
- 12 • Documents evidencing Keating's first use of the KDZ Bruxer mark in
- 13 the marketplace. (E.g., Ex. 1342)
- 14 • Documents evidencing that neither "bruxzir crown" nor "bruxer
- 15 crown" were generic terms for full contour zirconia crowns prior to April 2011.
- 16 (E.G., Ex. 2140)

17 **2. Keating's Counterclaim 2: Unfair Competition in Violation**

18 **of Cal. Bus. & Prof. Code § 17200 et seq.**

- 19 • Testimony from Keith Allred regarding Glidewell's use of the ®
- 20 symbol in connection with various product offerings; Glidewell's registration of the
- 21 BruxZir mark; and Glidewell's enforcement of the BruxZir mark.
- 22 • Testimony from Robin Bartolo regarding communications with
- 23 Keating regarding Keating's use of KDZ Bruxer; and the BruxZir Authorized Lab
- 24 program.
- 25 • Testimony from Jim Shuck regarding Glidewell's marketing of
- 26 products under the BruxZir brand.
- 27 • Emails between Glidewell and R-Dent Laboratories regarding
- 28 enforcement of the "BruxZir" mark. (Ex. 600)

- 1 • Emails between Authentic Dental Lab and Glidewell regarding
- 2 enforcement of the “BruxZir” mark. (Ex. 601)
- 3 • Emails between Pittman Dental Laboratory and Glidewell regarding
- 4 enforcement of the “BruxZir” mark. (Ex. 602)
- 5 • Emails between Assured Dental Lab and Glidewell regarding
- 6 enforcement of the “BruxZir” mark. (Ex. 603)
- 7 • United States Trademark Registration for BruxZir, Registration No.
- 8 3,739,663 dated 01/19/10. (Ex. 607)
- 9 • File History for US Trademark Registration No. 3,739,663 for BruxZir
- 10 (Class 10) various dates. (Ex. 608)
- 11 • Emails between Advanced Dental Laboratory and Glidewell regarding
- 12 enforcement of the “BruxZir” mark. (Ex. 148)
- 13 • Emails between Dentopia Dental Lab and Glidewell regarding
- 14 enforcement of the “BruxZir” mark. (Ex. 150)
- 15 • Emails between Showcase Dental Laboratories and Glidewell regarding
- 16 enforcement of the “BruxZir” mark. (Ex. 147)
- 17 • Emails between Barth Dental Laboratory and Glidewell regarding
- 18 enforcement of the “BruxZir” mark. (Ex. 151)
- 19 • Emails between China Dental Outsourcing and Glidewell regarding
- 20 enforcement of the “BruxZir” mark. (Ex. 146)
- 21 • Emails between Fusion Dental Laboratory Solutions and Glidewell
- 22 regarding enforcement of the “BruxZir” mark. (Ex. 141)
- 23 • Emails between Old Dominion and Glidewell regarding enforcement
- 24 of the “BruxZir” mark. (Ex. 149)

25 **3. Keating’s Counterclaim 3: Glidewell’s Actions Constitute**
26 **Misuse of Trademark**

- 27 • Since this is not a proper claim for affirmative relief, it is not necessary
- 28 to identify evidence to oppose this nonexistent claim.

1 **4. Keating's Counterclaim 4: Glidewell's Federally Registered**
2 **Trademark No. 3,739,663 Should be Cancelled**

3 • Testimony of James Shuck concerning creation of the BruxZir mark;
4 advertising and promotion of the BruxZir mark and BruxZir-branded products;
5 development, features, characteristics, and indicated uses of BruxZir-branded
6 products; use of the terms "bruxer" and "bruxer crown" in the dental industry; facts
7 indicating non-genericness of the BruxZir mark; facts indicating the strength of the
8 BruxZir mark and its indication of Glidewell Laboratories as a source of goods and
9 services.

10 • Testimony of Dr. Michael DiTolla concerning creation of the BruxZir
11 mark; advertising and promotion of the BruxZir mark and BruxZir-branded
12 products; development, features, characteristics, and indicated uses of BruxZir-
13 branded products; use of the terms "bruxer" and "bruxer crown" in the dental
14 industry; generic terms for full contour zirconia crowns; treatments for patients with
15 bruxism; facts indicating non-genericness of the BruxZir mark; facts indicating the
16 strength of the BruxZir mark and its indication of Glidewell Laboratories as a
17 source of goods and services; facts relating to likelihood of confusion between the
18 BruxZir mark and "KDZ Bruxer"; pronunciation of the terms "BruxZir" and
19 "bruxer" by dental practitioners. Expert testimony concerning distinctiveness (and
20 nongenericness) of the BruxZir mark, including that the mark is suggestive; generic
21 terms for full contour zirconia crowns; treatments for patients with bruxism.

22 • Testimony of Robin Bartolo concerning development, features,
23 characteristics, and indicated uses of BruxZir-branded products; use of the terms
24 "bruxer" and "bruxer crown" in the dental industry; facts indicating non-
25 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
26 and its indication of Glidewell Laboratories as a source of goods and services; and
27 operation of Glidewell's Authorized Labs program, Glidewell Direct, and
28 Glidewell's interactions with Authorized BruxZir Labs.

1 • Testimony of Robin Carden concerning development, features,
2 characteristics, and indicated uses of BruxZir-branded products; use of the terms
3 “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
4 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
5 and its indication of Glidewell Laboratories as a source of goods and services;
6 Glidewell’s interactions with Authorized BruxZir Labs and operation of Glidewell’s
7 Authorized Labs program; and commercial strength of the BruxZir mark, including
8 technical and educational presentations concerning BruxZir brand product.

9 • Testimony of Rudy Ramirez concerning creation of the BruxZir mark;
10 development, features, characteristics, and indicated uses of BruxZir-branded
11 products; use of the terms “bruxer” and “bruxer crown” in the dental industry; facts
12 indicating non-genericness of the BruxZir mark; facts indicating the commercial
13 strength of the BruxZir mark and its indication of Glidewell Laboratories as a
14 source of goods and services.

15 • Testimony of Keith Allred concerning Glidewell’s ownership of the
16 BruxZir mark and Trademark Reg. No. 3,739,663, and Glidewell’s enforcement of
17 its rights in the BruxZir mark.

18 • Testimony of Ronald Goldstein, D.D.S. concerning the validity
19 (distinctiveness and nongenericness) of the BruxZir mark, the conceptual and
20 commercial strength of the BruxZir mark; generic terms for full contour zirconia
21 crowns; treatments for patients with bruxism.

22 • Testimony of David Franklyn concerning the validity (distinctiveness
23 and nongenericness) of the BruxZir mark, the conceptual and commercial strength
24 of the BruxZir mark.

25 • Testimony of Gregory Doneff, D.D.S. concerning the validity of the
26 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
27 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
28 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark

1 and its indication of Glidewell Laboratories as a source of goods and services.

2 • Testimony of Howard Cohen, D.D.S. concerning the validity of the
3 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
4 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
5 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
6 and its indication of Glidewell Laboratories as a source of goods and services.

7 • Testimony of Spencer Luke, D.M.D. concerning the validity of the
8 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; facts
9 indicating non-genericness of the BruxZir mark; facts indicating the strength of the
10 BruxZir mark and its indication of Glidewell Laboratories as a source of goods and
11 services.

12 • Testimony of Stuart Newman, D.D.S. concerning the validity of the
13 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; facts
14 indicating non-genericness of the BruxZir mark; facts indicating the strength of the
15 BruxZir mark and its indication of Glidewell Laboratories as a source of goods and
16 services.

17 • Testimony of Thomas Bell, D.M.D. concerning the validity of the
18 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; facts
19 indicating non-genericness of the BruxZir mark; facts indicating the strength of the
20 BruxZir mark and its indication of Glidewell Laboratories as a source of goods and
21 services.

22 • Testimony of Terence Michiels, D.D.S. concerning the validity of the
23 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
24 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks; use of
25 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
26 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
27 and its indication of Glidewell Laboratories as a source of goods and services.

28 • Testimony of Kent Toca, D.D.S. concerning the validity of the

1 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
2 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
3 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
4 and its indication of Glidewell Laboratories as a source of goods and services.

5 • Testimony of Dr. Michael Fanning concerning the validity of the
6 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
7 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
8 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
9 and its indication of Glidewell Laboratories as a source of goods and services.

10 • Testimony of Dr. Vincent S. Cianciulli concerning the validity of the
11 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
12 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
13 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
14 and its indication of Glidewell Laboratories as a source of goods and services.

15 • Testimony of Dr. Ilya Benjamin concerning the validity of the BruxZir
16 mark; use of the terms “bruxer” and “bruxer crown” in the dental industry; facts
17 indicating non-genericness of the BruxZir mark; facts indicating the strength of the
18 BruxZir mark and its indication of Glidewell Laboratories as a source of goods and
19 services.

20 • Testimony of Dr. Dean Saiki concerning the validity of the BruxZir
21 mark; use of the terms “bruxer” and “bruxer crown” in the dental industry; facts
22 indicating non-genericness of the BruxZir mark; facts indicating the strength of the
23 BruxZir mark and its indication of Glidewell Laboratories as a source of goods and
24 services.

25 • Testimony of Dr. Robert McNicholas concerning the validity of the
26 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
27 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
28 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark

1 and its indication of Glidewell Laboratories as a source of goods and services.

2 • Testimony of Dr. Benjamin An concerning the validity of the BruxZir
3 mark, the conceptual and commercial strength of the BruxZir mark; use of the
4 terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
5 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
6 and its indication of Glidewell Laboratories as a source of goods and services.

7 • Testimony of Dr. Oscar Goren concerning the validity of the BruxZir
8 mark, the conceptual and commercial strength of the BruxZir mark; use of the
9 terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
10 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
11 and its indication of Glidewell Laboratories as a source of goods and services.

12 • Testimony of Dr. Dennis A. Gaishauer concerning the validity of the
13 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
14 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
15 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
16 and its indication of Glidewell Laboratories as a source of goods and services.

17 • Testimony of Dr. Dr. Chester A. Bizga concerning the validity of the
18 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
19 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
20 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
21 and its indication of Glidewell Laboratories as a source of goods and services.

22 • Testimony of Dr. Valentine Ferraris concerning the validity of the
23 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
24 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
25 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
26 and its indication of Glidewell Laboratories as a source of goods and services.

27 • Testimony of Dr. Paul Taylor concerning the validity of the BruxZir
28 mark, the conceptual and commercial strength of the BruxZir mark; use of the

1 terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
2 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
3 and its indication of Glidewell Laboratories as a source of goods and services.

4 • Testimony of Dr. Meredith S. Esposito concerning the validity of the
5 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
6 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
7 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
8 and its indication of Glidewell Laboratories as a source of goods and services.

9 • Testimony of Dr. John Griffith concerning the validity of the BruxZir
10 mark, the conceptual and commercial strength of the BruxZir mark; use of the
11 terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
12 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
13 and its indication of Glidewell Laboratories as a source of goods and services.

14 • Testimony of Scott Bigler concerning the validity and commercial
15 strength of the BruxZir mark, and Glidewell Direct and Glidewell’s interactions
16 with Authorized BruxZir Labs.

17 • Testimony of Glenn Yamamoto concerning the validity and
18 commercial strength of the BruxZir mark, and Glidewell Direct and Glidewell’s
19 interactions with Authorized BruxZir Labs.

20 • Testimony of Jacob Trachsel concerning the validity and commercial
21 strength of the BruxZir mark, and Glidewell Direct and Glidewell’s interactions
22 with Authorized BruxZir Labs.

23 • Testimony of Karen Chamberlain concerning the validity and
24 commercial strength of the BruxZir mark, and Glidewell Direct and Glidewell’s
25 interactions with Authorized BruxZir Labs.

26 • Testimony of Shaun Keating concerning or constituting admissions
27 that the BruxZir mark is nongeneric.

28 • Testimony of Bob Brandon concerning or constituting admissions that

1 the BruxZir mark is nongeneric.

- 2 • Reports showing Keating marketing expenses and sales. (Exs. 515,
3 943-46)
- 4 • Documents showing Glidewell's expenses to promote and market the
5 BruxZir mark and BruxZir-branded products. (E.g., Exs. 1550, 1564-68)
- 6 • Reports showing Glidewell website statistics. (Exs. 1549, 1551-52)
- 7 • Reports showing unit sales and revenues of BruxZir brand product.
8 (Exs. 599, 1531-32, 1560-61)
- 9 • List of Authorized BruxZir Labs. (Ex. 10)
- 10 • Exemplars of the BruxZir and KDZ Bruxer marks as they appear in the
11 marketplace. (Exs. 559, 615, 948, 1171, 1176, 1488-91)
- 12 • Keating prescription forms and lab notes. (Exs. 569, 1052, 1121,
13 1139, 1142, 1160)
- 14 • Application for the BruxZir mark by Glidewell. (Ex. 608)
- 15 • Documents showing examination of the BruxZir mark by the U.S.
16 Patent and Trademark Office. (Exs. 608, 1466, 1467)
- 17 • Trademark Manual of Examining Procedure, 5th Ed. (excerpts). (Ex.
18 1562)
- 19 • Registration of the BruxZir mark by the U.S. Patent and Trademark
20 Office. (Ex. 607)
- 21 • Documents showing that the BruxZir mark does not exist in a crowded
22 field (E.g., Exs. 618, 619)
- 23 • Dictionary excerpts. (E.g., Ex. 614)
- 24 • Advertising, marketing, and promotional material for the BruxZir
25 mark and BruxZir-branded products. (E.g., Exs. 66-68, 562-568, 570, 575-576,
26 578-579, 610, 1055-1061)
- 27 • Documents evidencing third party recognition of the BruxZir mark.
28 (E.g., Exs. 580-591, 594-598)

- 1 • Keating advertising and marketing material for KDZ Bruxer mark and
- 2 BruxZir-branded products. (E.g., Exs. 570, 574)
- 3 • Third party advertising and marketing material for full contour
- 4 zirconia crowns. (E.g., Exs. 560, 1452)
- 5 • Documents evidencing Glidewell's efforts to protect the BruxZir mark.
- 6 (E.g., Exs. 141, 146-151)
- 7 • Documents evidencing Keating's first use of the KDZ Bruxer mark in
- 8 the marketplace. (E.g., Ex. 1342)
- 9 • Documents evidencing that neither "bruxzir crown" nor "bruxer
- 10 crown" were generic terms for full contour zirconia crowns prior to April 2011.
- 11 (E.g., Ex. 2140)

12 **5. Keating's First Affirmative Defense: Glidewell's**
13 **Trademark is Invalid as it is Generic or Descriptive**

- 14 • Testimony of James Shuck concerning creation of the BruxZir mark;
- 15 advertising and promotion of the BruxZir mark and BruxZir-branded products;
- 16 development, features, characteristics, and indicated uses of BruxZir-branded
- 17 products; use of the terms "bruxer" and "bruxer crown" in the dental industry; facts
- 18 indicating non-genericness of the BruxZir mark; facts indicating the strength of the
- 19 BruxZir mark and its indication of Glidewell Laboratories as a source of goods and
- 20 services.
- 21 • Testimony of Dr. Michael DiTolla concerning creation of the BruxZir
- 22 mark; advertising and promotion of the BruxZir mark and BruxZir-branded
- 23 products; development, features, characteristics, and indicated uses of BruxZir-
- 24 branded products; use of the terms "bruxer" and "bruxer crown" in the dental
- 25 industry; generic terms for full contour zirconia crowns; treatments for patients with
- 26 bruxism; facts indicating non-genericness of the BruxZir mark; facts indicating the
- 27 strength of the BruxZir mark and its indication of Glidewell Laboratories as a
- 28 source of goods and services; facts relating to likelihood of confusion between the

1 BruxZir mark and “KDZ Bruxer”; pronunciation of the terms "BruxZir" and
2 "bruxer" by dental practitioners. Expert testimony concerning distinctiveness (and
3 nongenericness) of the BruxZir mark, including that the mark is suggestive; generic
4 terms for full contour zirconia crowns; treatments for patients with bruxism.

5 • Testimony of Robin Bartolo concerning development, features,
6 characteristics, and indicated uses of BruxZir-branded products; use of the terms
7 “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
8 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
9 and its indication of Glidewell Laboratories as a source of goods and services; and
10 operation of Glidewell's Authorized Labs program, Glidewell Direct, and
11 Glidewell’s interactions with Authorized BruxZir Labs.

12 • Testimony of Robin Carden concerning development, features,
13 characteristics, and indicated uses of BruxZir-branded products; use of the terms
14 “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
15 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
16 and its indication of Glidewell Laboratories as a source of goods and services;
17 Glidewell’s interactions with Authorized BruxZir Labs and operation of Glidewell's
18 Authorized Labs program; and commercial strength of the BruxZir mark, including
19 technical and educational presentations concerning BruxZir brand product.

20 • Testimony of Rudy Ramirez concerning creation of the BruxZir mark;
21 development, features, characteristics, and indicated uses of BruxZir-branded
22 products; use of the terms “bruxer” and “bruxer crown” in the dental industry; facts
23 indicating non-genericness of the BruxZir mark; facts indicating the commercial
24 strength of the BruxZir mark and its indication of Glidewell Laboratories as a
25 source of goods and services.

26 • Testimony of Keith Allred concerning Glidewell’s ownership of the
27 BruxZir mark and Trademark Reg. No. 3,739,663, and Glidewell’s enforcement of
28 its rights in the BruxZir mark.

- 1 • Testimony of Ronald Goldstein, D.D.S. concerning the validity
2 (distinctiveness and nongenericness) of the BruxZir mark, the conceptual and
3 commercial strength of the BruxZir mark; generic terms for full contour zirconia
4 crowns; treatments for patients with bruxism.
- 5 • Testimony of David Franklyn concerning the validity (distinctiveness
6 and nongenericness) of the BruxZir mark, the conceptual and commercial strength
7 of the BruxZir mark.
- 8 • Testimony of Gregory Doneff, D.D.S. concerning the validity of the
9 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
10 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
11 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
12 and its indication of Glidewell Laboratories as a source of goods and services.”
- 13 • Testimony of Howard Cohen, D.D.S. concerning the validity of the
14 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
15 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
16 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
17 and its indication of Glidewell Laboratories as a source of goods and services.”
- 18 • Testimony of Spencer Luke, D.M.D. concerning the validity of the
19 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; facts
20 indicating non-genericness of the BruxZir mark; facts indicating the strength of the
21 BruxZir mark and its indication of Glidewell Laboratories as a source of goods and
22 services.”
- 23 • Testimony of Stuart Newman, D.D.S. concerning the validity of the
24 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; facts
25 indicating non-genericness of the BruxZir mark; facts indicating the strength of the
26 BruxZir mark and its indication of Glidewell Laboratories as a source of goods and
27 services.”
- 28 • Testimony of Thomas Bell, D.M.D. concerning the validity of the

1 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; facts
2 indicating non-genericness of the BruxZir mark; facts indicating the strength of the
3 BruxZir mark and its indication of Glidewell Laboratories as a source of goods and
4 services.”

5 • Testimony of Terence Michiels, D.D.S. concerning the validity of the
6 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
7 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks; use of
8 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
9 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
10 and its indication of Glidewell Laboratories as a source of goods and services.”

11 • Testimony of Kent Toca, D.D.S. concerning the validity of the
12 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
13 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
14 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
15 and its indication of Glidewell Laboratories as a source of goods and services.”

16 • Testimony of Dr. Michael Fanning concerning the validity of the
17 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
18 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
19 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
20 and its indication of Glidewell Laboratories as a source of goods and services.”

21 • Testimony of Dr. Vincent S. Cianciulli concerning the validity of the
22 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
23 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
24 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
25 and its indication of Glidewell Laboratories as a source of goods and services.”

26 • Testimony of Dr. Ilya Benjamin concerning the validity of the BruxZir
27 mark; use of the terms “bruxer” and “bruxer crown” in the dental industry; facts
28 indicating non-genericness of the BruxZir mark; facts indicating the strength of the

1 BruxZir mark and its indication of Glidewell Laboratories as a source of goods and
2 services.”

3 • Testimony of Dr. Dean Saiki concerning the validity of the BruxZir
4 mark; use of the terms “bruxer” and “bruxer crown” in the dental industry; facts
5 indicating non-genericness of the BruxZir mark; facts indicating the strength of the
6 BruxZir mark and its indication of Glidewell Laboratories as a source of goods and
7 services.”

8 • Testimony of Dr. Robert McNicholas concerning the validity of the
9 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
10 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
11 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
12 and its indication of Glidewell Laboratories as a source of goods and services.”

13 • Testimony of Dr. Benjamin An concerning the validity of the BruxZir
14 mark, the conceptual and commercial strength of the BruxZir mark; use of the
15 terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
16 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
17 and its indication of Glidewell Laboratories as a source of goods and services.”

18 • Testimony of Dr. Oscar Goren concerning the validity of the BruxZir
19 mark, the conceptual and commercial strength of the BruxZir mark; use of the
20 terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
21 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
22 and its indication of Glidewell Laboratories as a source of goods and services.”

23 • Testimony of Dr. Dennis A. Gaishauser concerning the validity of the
24 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
25 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
26 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
27 and its indication of Glidewell Laboratories as a source of goods and services.”

28 • Testimony of Dr. Dr. Chester A. Bizga concerning the validity of the

1 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
2 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
3 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
4 and its indication of Glidewell Laboratories as a source of goods and services.”

5 • Testimony of Dr. Valentine Ferraris concerning the validity of the
6 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
7 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
8 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
9 and its indication of Glidewell Laboratories as a source of goods and services.”

10 • Testimony of Dr. Paul Taylor concerning the validity of the BruxZir
11 mark, the conceptual and commercial strength of the BruxZir mark; use of the
12 terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
13 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
14 and its indication of Glidewell Laboratories as a source of goods and services.”

15 • Testimony of Dr. Meredith S. Esposito concerning the validity of the
16 BruxZir mark, the conceptual and commercial strength of the BruxZir mark; use of
17 the terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
18 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
19 and its indication of Glidewell Laboratories as a source of goods and services.”

20 • Testimony of Dr. John Griffith concerning the validity of the BruxZir
21 mark, the conceptual and commercial strength of the BruxZir mark; use of the
22 terms “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
23 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
24 and its indication of Glidewell Laboratories as a source of goods and services.”

25 • Testimony of Scott Bigler concerning the validity and commercial
26 strength of the BruxZir mark, and Glidewell Direct and Glidewell’s interactions
27 with Authorized BruxZir Labs.

28 • Testimony of Glenn Yamamoto concerning the validity and

1 commercial strength of the BruxZir mark, and Glidewell Direct and Glidewell's
2 interactions with Authorized BruxZir Labs.

3 • Testimony of Jacob Trachsel concerning the validity and commercial
4 strength of the BruxZir mark, and Glidewell Direct and Glidewell's interactions
5 with Authorized BruxZir Labs.

6 • Testimony of Kareen Chamberlain concerning the validity and
7 commercial strength of the BruxZir mark, and Glidewell Direct and Glidewell's
8 interactions with Authorized BruxZir Labs.

9 • Testimony of Shaun Keating concerning or constituting admissions
10 that the BruxZir mark is nongeneric.

11 • Testimony of Bob Brandon concerning or constituting admissions that
12 the BruxZir mark is nongeneric.

13 • Reports showing Keating marketing expenses and sales. (Exs. 515,
14 943-46)

15 • Documents showing Glidewell's expenses to promote and market the
16 BruxZir mark and BruxZir-branded products. (E.g., Exs. 1550, 1564-68)

17 • Reports showing Glidewell website statistics. (Exs. 1549, 1551-52)

18 • Reports showing unit sales and revenues of BruxZir brand product.
19 (Exs. 599, 1531-32, 1560-61)

20 • List of Authorized BruxZir Labs. (Ex. 10)

21 • Exemplars of the BruxZir and KDZ Bruxer marks as they appear in the
22 marketplace. (Exs. 559, 615, 948, 1171, 1176, 1488-91)

23 • Keating prescription forms and lab notes. (Exs. 569, 1052, 1121,
24 1139, 1142, 1160)

25 • Application for the BruxZir mark by Glidewell. (Ex. 608)

26 • Documents showing examination of the BruxZir mark by the U.S.
27 Patent and Trademark Office. (Exs. 608, 1466, 1467)

28 • Trademark Manual of Examining Procedure, 5th Ed. (excerpts). (Ex.

1 1562)

2 • Registration of the BruxZir mark by the U.S. Patent and Trademark
3 Office. (Ex. 607)

4 • Documents showing that the BruxZir mark does not exist in a crowded
5 field (E.g., Exs. 618, 619)

6 • Dictionary excerpts. (E.g., Ex. 614)

7 • Advertising, marketing, and promotional material for the BruxZir
8 mark and BruxZir-branded products. (E.g., Exs. 66-68, 562-568, 570, 575-576,
9 578-579, 610, 1055-1061)

10 • Documents evidencing third party recognition of the BruxZir mark.
11 (E.g., Exs. 580-591, 594-598)

12 • Keating advertising and marketing material for KDZ Bruxer mark and
13 BruxZir-branded products. (E.g., Exs. 570, 574)

14 • Third party advertising and marketing material for full contour
15 zirconia crowns. (E.g., Exs. 560, 1452)

16 • Documents evidencing Glidewell's efforts to protect the BruxZir mark.
17 (E.g., Exs. 141, 146-151)

18 • Documents evidencing Keating's first use of the KDZ Bruxer mark in
19 the marketplace. (E.g., Ex. 1342)

20 • Documents evidencing that neither "bruxzir crown" nor "bruxer
21 crown" were generic terms for full contour zirconia crowns prior to April 2011.
22 (E.g., Ex. 2140)

23 **6. Keating's Second Affirmative Defense: No Likelihood of**
24 **Confusion**

25 • Testimony of James Shuck concerning creation of the BruxZir mark;
26 advertising and promotion of the BruxZir mark and BruxZir-branded products;
27 development, features, characteristics, and indicated uses of BruxZir-branded
28 products; use of the terms "bruxer" and "bruxer crown" in the dental industry; facts

1 indicating non-genericness of the BruxZir mark; facts indicating the strength of the
2 BruxZir mark and its indication of Glidewell Laboratories as a source of goods and
3 services; facts relating to likelihood of confusion between the BruxZir mark and
4 “KDZ Bruxer”; the commercial strength of the BruxZir mark, the proximity of the
5 goods marketed under the BruxZir and KDZ Bruxer marks, the channels through
6 which BruxZir and KDZ Bruxer brand goods are marketed, the type of goods
7 marketed under those marks, and the degree of care typically used in selecting a
8 particular brand of such goods.

9 • Testimony of Dr. Michael DiTolla concerning creation of the BruxZir
10 mark; advertising and promotion of the BruxZir mark and BruxZir-branded
11 products; development, features, characteristics, and indicated uses of BruxZir-
12 branded products; use of the terms “bruxer” and “bruxer crown” in the dental
13 industry; generic terms for full contour zirconia crowns; treatments for patients with
14 bruxism; facts indicating non-genericness of the BruxZir mark; facts indicating the
15 strength of the BruxZir mark and its indication of Glidewell Laboratories as a
16 source of goods and services; facts relating to likelihood of confusion between the
17 BruxZir mark and “KDZ Bruxer”; pronunciation of the terms “BruxZir” and
18 “bruxer” by dental practitioners; the commercial strength of the BruxZir mark, the
19 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
20 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
21 type of goods marketed under those marks, and the degree of care typically used in
22 selecting a particular brand of such goods. Expert testimony concerning
23 distinctiveness (and nongenericness) of the BruxZir mark, including that the mark
24 is suggestive; generic terms for full contour zirconia crowns; treatments for patients
25 with bruxism.

26 • Testimony of Nicole Fallon concerning one or more instances of actual
27 confusion.

28 • Testimony of Robin Bartolo concerning development, features,

1 characteristics, and indicated uses of BruxZir-branded products; use of the terms
2 “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
3 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
4 and its indication of Glidewell Laboratories as a source of goods and services; and
5 operation of Glidewell's Authorized Labs program, Glidewell Direct, and
6 Glidewell’s interactions with Authorized BruxZir Labs.

7 • Testimony of Robin Carden concerning development, features,
8 characteristics, and indicated uses of BruxZir-branded products; use of the terms
9 “bruxer” and “bruxer crown” in the dental industry; facts indicating non-
10 genericness of the BruxZir mark; facts indicating the strength of the BruxZir mark
11 and its indication of Glidewell Laboratories as a source of goods and services;
12 Glidewell’s interactions with Authorized BruxZir Labs and operation of Glidewell's
13 Authorized Labs program; and commercial strength of the BruxZir mark, including
14 technical and educational presentations concerning BruxZir brand product.

15 • Testimony of Rudy Ramirez concerning creation of the BruxZir mark;
16 development, features, characteristics, and indicated uses of BruxZir-branded
17 products; use of the terms “bruxer” and “bruxer crown” in the dental industry; facts
18 indicating non-genericness of the BruxZir mark; facts indicating the commercial
19 strength of the BruxZir mark and its indication of Glidewell Laboratories as a
20 source of goods and services.

21 • Testimony of Keith Allred concerning Glidewell’s ownership of the
22 BruxZir mark and Trademark Reg. No. 3,739,663, and Glidewell’s enforcement of
23 its rights in the BruxZir mark.

24 • Testimony of Glenn Sasaki concerning Glidewell’s damages and
25 Keating’s profits.

26 • Testimony of Ronald Goldstein, D.D.S. concerning the validity
27 (distinctiveness and nongenericness) of the BruxZir mark, the conceptual and
28 commercial strength of the BruxZir mark, the proximity of the goods marketed

1 under the BruxZir and KDZ Bruxer marks, the channels through which BruxZir and
2 KDZ Bruxer brand goods are marketed, the type of goods marketed under those
3 marks, the degree of care typically used in selecting a particular brand of such
4 goods, and the likelihood of confusion resulting from Keating's use of KDZ
5 Bruxer; generic terms for full contour zirconia crowns; treatments for patients with
6 bruxism

7 • Testimony of David Franklyn concerning the validity (distinctiveness
8 and nongenericness) of the BruxZir mark, the conceptual and commercial strength
9 of the BruxZir mark, the proximity of the goods marketed under the BruxZir and
10 KDZ Bruxer marks, the channels through which BruxZir and KDZ Bruxer brand
11 goods are marketed, the type of goods marketed under those marks, the degree of
12 care typically used in selecting a particular brand of such goods, and the likelihood
13 of confusion resulting from Keating's use of KDZ Bruxer.

14 • Testimony of Gregory Doneff, D.D.S. concerning the validity of the
15 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
16 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
17 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
18 type of goods marketed under those marks, and the degree of care typically used in
19 selecting a particular brand of such goods; use of the terms "bruxer" and "bruxer
20 crown" in the dental industry; facts indicating non-genericness of the BruxZir mark;
21 facts indicating the strength of the BruxZir mark and its indication of Glidewell
22 Laboratories as a source of goods and services; facts relating to likelihood of
23 confusion between the BruxZir mark and "KDZ Bruxer."

24 • Testimony of Howard Cohen, D.D.S. concerning the validity of the
25 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
26 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
27 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
28 type of goods marketed under those marks, and the degree of care typically used in

1 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
2 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
3 facts indicating the strength of the BruxZir mark and its indication of Glidewell
4 Laboratories as a source of goods and services; facts relating to likelihood of
5 confusion between the BruxZir mark and “KDZ Bruxer.”

6 • Testimony of Spencer Luke, D.M.D. concerning the validity of the
7 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
8 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
9 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
10 type of goods marketed under those marks, and the degree of care typically used in
11 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
12 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
13 facts indicating the strength of the BruxZir mark and its indication of Glidewell
14 Laboratories as a source of goods and services; facts relating to likelihood of
15 confusion between the BruxZir mark and “KDZ Bruxer.”

16 • Testimony of Stuart Newman, D.D.S. concerning the validity of the
17 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
18 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
19 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
20 type of goods marketed under those marks, and the degree of care typically used in
21 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
22 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
23 facts indicating the strength of the BruxZir mark and its indication of Glidewell
24 Laboratories as a source of goods and services; facts relating to likelihood of
25 confusion between the BruxZir mark and “KDZ Bruxer.”

26 • Testimony of Thomas Bell, D.M.D. concerning the validity of the
27 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
28 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the

1 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
2 type of goods marketed under those marks, and the degree of care typically used in
3 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
4 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
5 facts indicating the strength of the BruxZir mark and its indication of Glidewell
6 Laboratories as a source of goods and services; facts relating to likelihood of
7 confusion between the BruxZir mark and “KDZ Bruxer.”

8 • Testimony of Terence Michiels, D.D.S. concerning the validity of the
9 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
10 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
11 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
12 type of goods marketed under those marks, and the degree of care typically used in
13 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
14 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
15 facts indicating the strength of the BruxZir mark and its indication of Glidewell
16 Laboratories as a source of goods and services; facts relating to likelihood of
17 confusion between the BruxZir mark and “KDZ Bruxer.”

18 • Testimony of Kent Toca, D.D.S. concerning the validity of the
19 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
20 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
21 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
22 type of goods marketed under those marks, and the degree of care typically used in
23 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
24 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
25 facts indicating the strength of the BruxZir mark and its indication of Glidewell
26 Laboratories as a source of goods and services; facts relating to likelihood of
27 confusion between the BruxZir mark and “KDZ Bruxer.”

28 • Testimony of Dr. Michael Fanning concerning the validity of the

1 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
2 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
3 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
4 type of goods marketed under those marks, and the degree of care typically used in
5 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
6 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
7 facts indicating the strength of the BruxZir mark and its indication of Glidewell
8 Laboratories as a source of goods and services; facts relating to likelihood of
9 confusion between the BruxZir mark and “KDZ Bruxer.”

10 • Testimony of Dr. Vincent S. Cianciulli concerning the validity of the
11 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
12 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
13 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
14 type of goods marketed under those marks, and the degree of care typically used in
15 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
16 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
17 facts indicating the strength of the BruxZir mark and its indication of Glidewell
18 Laboratories as a source of goods and services; facts relating to likelihood of
19 confusion between the BruxZir mark and “KDZ Bruxer.”

20 • Testimony of Dr. Ilya Benjamin concerning the validity of the BruxZir
21 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
22 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
23 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
24 goods marketed under those marks, and the degree of care typically used in
25 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
26 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
27 facts indicating the strength of the BruxZir mark and its indication of Glidewell
28 Laboratories as a source of goods and services; facts relating to likelihood of

1 confusion between the BruxZir mark and “KDZ Bruxer.”

2 • Testimony of Dr. Dean Saiki concerning the validity of the BruxZir
3 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
4 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
5 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
6 goods marketed under those marks, and the degree of care typically used in
7 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
8 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
9 facts indicating the strength of the BruxZir mark and its indication of Glidewell
10 Laboratories as a source of goods and services; facts relating to likelihood of
11 confusion between the BruxZir mark and “KDZ Bruxer.”

12 • Testimony of Dr. Robert McNicholas concerning the validity of the
13 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
14 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
15 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
16 type of goods marketed under those marks, and the degree of care typically used in
17 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
18 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
19 facts indicating the strength of the BruxZir mark and its indication of Glidewell
20 Laboratories as a source of goods and services; facts relating to likelihood of
21 confusion between the BruxZir mark and “KDZ Bruxer.”

22 • Testimony of Dr. Benjamin An concerning the validity of the BruxZir
23 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
24 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
25 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
26 goods marketed under those marks, and the degree of care typically used in
27 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
28 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;

1 facts indicating the strength of the BruxZir mark and its indication of Glidewell
2 Laboratories as a source of goods and services; facts relating to likelihood of
3 confusion between the BruxZir mark and “KDZ Bruxer.”

4 • Testimony of Dr. Oscar Goren concerning the validity of the BruxZir
5 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
6 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
7 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
8 goods marketed under those marks, and the degree of care typically used in
9 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
10 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
11 facts indicating the strength of the BruxZir mark and its indication of Glidewell
12 Laboratories as a source of goods and services; facts relating to likelihood of
13 confusion between the BruxZir mark and “KDZ Bruxer.”

14 • Testimony of Dr. Dennis A. Gaishauer concerning the validity of the
15 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
16 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
17 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
18 type of goods marketed under those marks, and the degree of care typically used in
19 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
20 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
21 facts indicating the strength of the BruxZir mark and its indication of Glidewell
22 Laboratories as a source of goods and services; facts relating to likelihood of
23 confusion between the BruxZir mark and “KDZ Bruxer.”

24 • Testimony of Dr. Dr. Chester A. Bizga concerning the validity of the
25 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
26 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
27 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
28 type of goods marketed under those marks, and the degree of care typically used in

1 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
2 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
3 facts indicating the strength of the BruxZir mark and its indication of Glidewell
4 Laboratories as a source of goods and services; facts relating to likelihood of
5 confusion between the BruxZir mark and “KDZ Bruxer.”

6 • Testimony of Dr. Valentine Ferraris concerning the validity of the
7 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
8 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the
9 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
10 type of goods marketed under those marks, and the degree of care typically used in
11 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
12 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
13 facts indicating the strength of the BruxZir mark and its indication of Glidewell
14 Laboratories as a source of goods and services; facts relating to likelihood of
15 confusion between the BruxZir mark and “KDZ Bruxer.”

16 • Testimony of Dr. Paul Taylor concerning the validity of the BruxZir
17 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
18 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
19 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
20 goods marketed under those marks, and the degree of care typically used in
21 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
22 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
23 facts indicating the strength of the BruxZir mark and its indication of Glidewell
24 Laboratories as a source of goods and services; facts relating to likelihood of
25 confusion between the BruxZir mark and “KDZ Bruxer.”

26 • Testimony of Dr. Meredith S. Esposito concerning the validity of the
27 BruxZir mark, the conceptual and commercial strength of the BruxZir mark, the
28 proximity of the goods marketed under the BruxZir and KDZ Bruxer marks, the

1 channels through which BruxZir and KDZ Bruxer brand goods are marketed, the
2 type of goods marketed under those marks, and the degree of care typically used in
3 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
4 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
5 facts indicating the strength of the BruxZir mark and its indication of Glidewell
6 Laboratories as a source of goods and services; facts relating to likelihood of
7 confusion between the BruxZir mark and “KDZ Bruxer.”

8 • Testimony of Dr. John Griffith concerning the validity of the BruxZir
9 mark, the conceptual and commercial strength of the BruxZir mark, the proximity
10 of the goods marketed under the BruxZir and KDZ Bruxer marks, the channels
11 through which BruxZir and KDZ Bruxer brand goods are marketed, the type of
12 goods marketed under those marks, and the degree of care typically used in
13 selecting a particular brand of such goods; use of the terms “bruxer” and “bruxer
14 crown” in the dental industry; facts indicating non-genericness of the BruxZir mark;
15 facts indicating the strength of the BruxZir mark and its indication of Glidewell
16 Laboratories as a source of goods and services; facts relating to likelihood of
17 confusion between the BruxZir mark and “KDZ Bruxer.”

18 • Testimony of Scott Bigler concerning the validity and commercial
19 strength of the BruxZir mark, and Glidewell Direct and Glidewell’s interactions
20 with Authorized BruxZir Labs.

21 • Testimony of Glenn Yamamoto concerning the validity and
22 commercial strength of the BruxZir mark, and Glidewell Direct and Glidewell’s
23 interactions with Authorized BruxZir Labs.

24 • Testimony of Jacob Trachsel concerning the validity and commercial
25 strength of the BruxZir mark, and Glidewell Direct and Glidewell’s interactions
26 with Authorized BruxZir Labs.

27 • Testimony of Karen Chamberlain concerning the validity and
28 commercial strength of the BruxZir mark, and Glidewell Direct and Glidewell’s

1 interactions with Authorized BruxZir Labs.

2 • Testimony of Shaun Keating concerning or constituting admissions
3 that the BruxZir mark is nongeneric; advertising and promotion of the BruxZir
4 mark and BruxZir-branded products; development, features, characteristics, and
5 indicated uses of BruxZir-branded products; use of the terms "bruxer" and "bruxer
6 crown" in the dental industry; facts indicating non-genericness of the BruxZir mark;
7 facts indicating the strength of the BruxZir mark and its indication of Glidewell
8 Laboratories as a source of goods and services; facts relating to likelihood of
9 confusion between the BruxZir mark and "KDZ Bruxer"; the commercial strength
10 of the BruxZir mark; the proximity of the goods marketed under the BruxZir and
11 KDZ Bruxer marks; the channels through which BruxZir and KDZ Bruxer brand
12 goods are marketed; Keating's intent in selecting the KDZ Bruxer mark; the type of
13 goods marketed under those marks; and the degree of care typically used in
14 selecting a particular brand of such goods.

15 • Testimony of Robert Brandon concerning or constituting admissions
16 that the BruxZir mark is nongeneric; advertising and promotion of the BruxZir
17 mark and BruxZir-branded products; development, features, characteristics, and
18 indicated uses of BruxZir-branded products; use of the terms "bruxer" and "bruxer
19 crown" in the dental industry; facts indicating non-genericness of the BruxZir mark;
20 facts indicating the strength of the BruxZir mark and its indication of Glidewell
21 Laboratories as a source of goods and services; facts relating to likelihood of
22 confusion between the BruxZir mark and "KDZ Bruxer"; the commercial strength
23 of the BruxZir mark; the proximity of the goods marketed under the BruxZir and
24 KDZ Bruxer marks; the channels through which BruxZir and KDZ Bruxer brand
25 goods are marketed; Keating's intent in selecting the KDZ Bruxer mark; the type of
26 goods marketed under those marks; and the degree of care typically used in
27 selecting a particular brand of such goods.

28 • Testimony of Diane Donich concerning Keating's sales of and profits

1 from sales of product under the KDZ Bruxer mark.

- 2 • Reports showing Keating marketing expenses and sales. (Exs. 515,
3 943-46)
- 4 • Documents showing Glidewell's expenses to promote and market the
5 BruxZir mark and BruxZir-branded products. (E.g., Exs. 1550, 1564-68)
- 6 • Reports showing Glidewell website statistics. (Exs. 1549, 1551-52)
- 7 • Reports showing unit sales and revenues of BruxZir brand product.
8 (Exs. 599, 1531-32, 1560-61)
- 9 • List of Authorized BruxZir Labs. (Ex. 10)
- 10 • Exemplars of the BruxZir and KDZ Bruxer marks as they appear in the
11 marketplace. (Exs. 559, 615, 948, 1171, 1176, 1488-91)
- 12 • Call note report, and invoice and fax transmittal, regarding contact
13 with Dr. Le's office. (Exs. 556-57)
- 14 • Keating prescription forms and lab notes. (Exs. 569, 1052, 1121,
15 1139, 1142, 1160)
- 16 • Application for the BruxZir mark by Glidewell. (Ex. 608)
- 17 • Documents showing examination of the BruxZir mark by the U.S.
18 Patent and Trademark Office. (Exs. 608, 1466, 1467)
- 19 • Trademark Manual of Examining Procedure, 5th Ed. (excerpts). (Ex.
20 1562)
- 21 • Registration of the BruxZir mark by the U.S. Patent and Trademark
22 Office. (Ex. 607)
- 23 • Documents showing that the BruxZir mark does not exist in a crowded
24 field (E.g., Exs. 618, 619)
- 25 • Dictionary excerpts. (E.g., Ex. 614)
- 26 • Advertising, marketing, and promotional material for the BruxZir
27 mark and BruxZir-branded products. (E.g., Exs. 66-68, 562-568, 570, 575-576,
28 578-579, 610, 1055-1061)

- 1 • Documents evidencing third party recognition of the BruxZir mark.
2 (E.g., Exs. 580-591, 594-598)
- 3 • Keating advertising and marketing material for KDZ Bruxer mark and
4 BruxZir-branded products. (E.g., Exs. 570, 574)
- 5 • Third party advertising and marketing material for full contour
6 zirconia crowns. (E.g., Exs. 560, 1452)
- 7 • Documents evidencing Glidewell's efforts to protect the BruxZir mark.
8 (E.g., Exs. 141, 146-151)
- 9 • Documents evidencing Keating's first use of the KDZ Bruxer mark in
10 the marketplace. (E.g., Ex. 1342)
- 11 • Documents evidencing that neither "bruxzir crown" nor "bruxer
12 crown" were generic terms for full contour zirconia crowns prior to April 2011.
13 (E.G., Ex. 2140)

14 7. **Keating's Third Affirmative Defense: Glidewell is estopped**
15 **from asserting that any rights that it may have in the**
16 **trademark BruxZir are so broad as to cover or include**
17 **competitors' use of the words Brux or Bruxer within those**
18 **competitors' trademarks**

- 19 • Testimony from Keith Allred regarding Glidewell's use of the ®
20 symbol in connection with various product offerings; Glidewell's registration of the
21 BruxZir mark; and Glidewell's enforcement of the BruxZir mark.
- 22 • Testimony from Robin Bartolo regarding communications with
23 Keating regarding Keating's use of KDZ Bruxer; and the BruxZir Authorized Lab
24 program.
- 25 • Testimony from Jim Shuck regarding Glidewell's marketing of
26 products under the BruxZir brand.
- 27 • Emails between Glidewell and R-Dent Laboratories regarding
28 enforcement of the "BruxZir" mark. (Ex. 600)

- 1 • Emails between Authentic Dental Lab and Glidewell regarding
- 2 enforcement of the “BruxZir” mark. (Ex. 601)
- 3 • Emails between Pittman Dental Laboratory and Glidewell regarding
- 4 enforcement of the “BruxZir” mark. (Ex. 602)
- 5 • Emails between Assured Dental Lab and Glidewell regarding
- 6 enforcement of the “BruxZir” mark. (Ex. 603)
- 7 • Letter from Glidewell to Keating regarding use of BruxZir trademark.
- 8 (Ex. 29)
- 9 • United States Trademark Registration for BruxZir, Registration No.
- 10 3,739,663 dated 01/19/10. (Ex. 607)
- 11 • File History for US Trademark Registration No. 3,739,663 for BruxZir
- 12 (Class 10) various dates. (Ex. 608)
- 13 • Emails between Advanced Dental Laboratory and Glidewell regarding
- 14 enforcement of the “BruxZir” mark. (Ex. 148)
- 15 • Emails between Dentopia Dental Lab and Glidewell regarding
- 16 enforcement of the “BruxZir” mark. (Ex. 150)
- 17 • Emails between Showcase Dental Laboratories and Glidewell regarding
- 18 enforcement of the “BruxZir” mark. (Ex. 147)
- 19 • Emails between Barth Dental Laboratory and Glidewell regarding
- 20 enforcement of the “BruxZir” mark. (Ex. 151)
- 21 • Emails between China Dental Outsourcing and Glidewell regarding
- 22 enforcement of the “BruxZir” mark. (Ex. 146)
- 23 • Emails between Fusion Dental Laboratory Solutions and Glidewell
- 24 regarding enforcement of the “BruxZir” mark. (Ex. 141)
- 25 • Emails between Old Dominion and Glidewell regarding enforcement
- 26 of the “BruxZir” mark. (Ex. 149)
- 27
- 28

1 **8. Keating's Fourth Affirmative Defense: Misuse of**
2 **Trademark/Unclean Hands/Unfair Competition**

- 3 • Testimony from Keith Allred regarding Glidewell's use of the ®
4 symbol in connection with various product offerings; Glidewell's registration of the
5 BruxZir mark; and Glidewell's enforcement of the BruxZir mark.
- 6 • Testimony from Robin Bartolo regarding communications with
7 Keating regarding Keating's use of KDZ Bruxer; and the BruxZir Authorized Lab
8 program.
- 9 • Testimony from Jim Shuck regarding Glidewell's marketing of
10 products under the BruxZir brand.
- 11 • Emails between Glidewell and R-Dent Laboratories regarding
12 enforcement of the "BruxZir" mark. (Ex. 600)
- 13 • Emails between Authentic Dental Lab and Glidewell regarding
14 enforcement of the "BruxZir" mark. (Ex. 601)
- 15 • Emails between Pittman Dental Laboratory and Glidewell regarding
16 enforcement of the "BruxZir" mark. (Ex. 602)
- 17 • Emails between Assured Dental Lab and Glidewell regarding
18 enforcement of the "BruxZir" mark. (Ex. 603)
- 19 • United States Trademark Registration for BruxZir, Registration No.
20 3,739,663 dated 01/19/10. (Ex. 607)
- 21 • File History for US Trademark Registration No. 3,739,663 for BruxZir
22 (Class 10) various dates. (Ex. 608)
- 23 • Emails between Advanced Dental Laboratory and Glidewell regarding
24 enforcement of the "BruxZir" mark. (Ex. 148)
- 25 • Emails between Dentopia Dental Lab and Glidewell regarding
26 enforcement of the "BruxZir" mark. (Ex. 150)
- 27 • Emails between Showcase Dental Laboratories and Glidewell regarding
28 enforcement of the "BruxZir" mark. (Ex. 147)

- 1 • Emails between Barth Dental Laboratory and Glidewell regarding
- 2 enforcement of the “BruxZir” mark. (Ex. 151)
- 3 • Emails between China Dental Outsourcing and Glidewell regarding
- 4 enforcement of the “BruxZir” mark. (Ex. 146)
- 5 • Emails between Fusion Dental Laboratory Solutions and Glidewell
- 6 regarding enforcement of the “BruxZir” mark. (Ex. 141)
- 7 • Emails between Old Dominion and Glidewell regarding enforcement
- 8 of the “BruxZir” mark. (Ex. 149)

9 **9. Keating’s Fifth Affirmative Defense: Fair Use.**

- 10 • Testimony of Keith Allred regarding Glidewell's registration of the
- 11 "BruxZir" mark.
- 12 • Testimony of Robin Bartolo regarding the BruxZir Authorized Lab
- 13 program.
- 14 • Testimony of David Franklyn concerning Keating's use of KDZ
- 15 Bruxer as a trademark rather than solely to describe its goods.
- 16 • Testimony from Shaun Keating regarding Keating's use of KDZ
- 17 Bruxer as a trademark; Keating's efforts to register KDZ Bruxer as a trademark.
- 18 • Testimony of Robert Brandon regarding Keating's use of KDZ Bruxer
- 19 as a trademark; Keating's efforts to register KDZ Bruxer as a trademark.
- 20 • U.S. Patent and Trademark Office file history of Registration No.
- 21 85/287,029 for KDZ Bruxer. (Ex. 2063)
- 22 • Keating Dental Arts, Inc. Second Amended Answer, Affirmative
- 23 Defenses, and Counterclaims: Demand for Jury Trial dated 10/26/12. (Ex. 1342)
- 24 • Documentary evidence and testimony concerning Keating’s use of the
- 25 term KDZ Bruxer, including on its website and in advertising

26 **III. EVIDENTIARY ISSUES.**

27 Glidewell expects the following evidentiary issues will arise by motion *in*

28 *limine*.

Plaintiff's Motions in Limine:

Motion in Limine No. 1: Motion to exclude evidence or argument regarding the purported generic use of BruxZir or bruxer for full contour zirconia crowns after April 2011. The date for determining genericness is the date that Keating entered the market—in this case, April of 2011. *Yellow Cab Co. of Sacramento v. Yellow Cab of Elk Grove, Inc.*, 419 F.3d 925, 928 (9th Cir. 2005). Usages after that date are irrelevant and should be excluded pursuant to Rules 402 and 403 of the Federal Rules of Evidence.

Motion in Limine No. 2: Motion to exclude evidence or argument regarding webpages from a source other than the parties and Authorized BruxZir Labs, on the grounds that they are not properly authenticated and constitute inadmissible hearsay. To properly authenticate a website, a person with personal knowledge of the contents of the website must testify. *In re Homestore.com, Inc. Sec. Litig.*, 347 F. Supp. 2d 769, 782-83 (C.D. Cal. 2004). Keating's witnesses cannot such testimony, and thus the websites should be excluded. Further, the websites contain hearsay and do not fall within the scope of any exception, and so should be excluded on that ground as wel. *See United States v. Jackson*, 208 F.3d 633, 637 (7th Cir. 2000).

Motion in Limine No. 3: Motion to exclude to exclude testimony from Keating's expert Dr. David Eggelston as his opinions on issues relating to genericness do not need meet the requirements of Federal Rule of Evidence 702, and to exclude Eggelston from offering new opinions on issues relating to likelihood of confusion. By this motion, Glidewell seeks an order precluding Keating from introducing testimony from Dr. Eggelston that the terms "Bruxzir" or "bruxer" are generic terms for all zirconia dental crowns, on the grounds that Dr. Eggelston's testimony is neither relevant nor reliable under Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Dr. Eggelston does not opine as to whether the terms "Bruxzir" or "bruxer"

1 were generic terms in the dental industry for all zirconia crowns as of April 2011 –
2 the crucial date for determining genericness. *Yellow Cab Co. of Sacramento v.*
3 *Yellow Cab of Elk Grove, Inc.*, 419 F.3d 925, 928 (9th Cir. 2005). Nor could he.
4 The vast majority of the materials that he relies upon are unreliable, unauthenticated
5 hearsay websites that are either post-dated April 2011 or are undated. Fed. R. Evid.
6 702 (expert opinion must be reliable and be based on “sufficient facts or data”).

7 **Motion in Limine No. 4:** Motion to exclude testimony from Keating’s
8 expert Lori Boatright as her opinions on issues relating to genericness do not need
9 meet the requirements of Federal Rule of Evidence 702, and to exclude Boatright
10 from offering new opinions on issues relating to likelihood of confusion. By this
11 motion, Glidewell seeks an order precluding Keating from introducing testimony
12 from Boatright that the terms “Bruxzir” or “bruxer” are generic terms for all
13 zirconia dental crowns, on the grounds that Ms. Boatright’s testimony is neither
14 relevant nor reliable under Federal Rule of Evidence 702 and *Daubert v. Merrell*
15 *Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Ms. Boatright does not opine as
16 to whether the terms “Bruxzir” or “bruxer” were generic terms in the dental
17 industry for all zirconia crowns as of April 2011 – the crucial date for determining
18 genericness. *Yellow Cab Co. of Sacramento v. Yellow Cab of Elk Grove, Inc.*, 419
19 F.3d 925, 928 (9th Cir. 2005). Her opinion also constitutes impermissible legal
20 conclusions and should be excluded as a consequence. *Nationwide Transp. Fin. v.*
21 *Cass Info. Sys.*, 523 F.3d 1051, 1059–60 (9th Cir.2008).

22 **Motion in Limine No. 5:** Motion to exclude any evidence or argument
23 regarding Keating's petition to cancel the BruxZir registration and its opposition to
24 Glidewell's application to register BruxZir for the Glidewell milling blanks, on the
25 ground that these proceedings are irrelevant to the claims or defenses of the parties
26 and are likely to confuse the issues, mislead the jury and waste time. Fed. R. Evid.
27 402, 403.

28 **Motion in Limine No. 6:** Motion to exclude evidence or argument

1 regarding any purported consultation with counsel, or the content of any advice of
2 counsel that Keating may have received, regarding its use of the name “KDZ
3 Bruxer.” Keating has failed to waive the attorney client privilege or to disclose the
4 content of such advice of counsel. The probative value of any such evidence or
5 argument is substantially outweighed by the danger of unfair prejudice to Glidewell
6 and/or misleading the jury. Fed. R. Evid. 403; Fed. R. Civ. P. 37.

7 **Motion in Limine No. 7:** Motion to exclude testimony or argument that
8 Keating is purportedly being bullied by Glidewell or otherwise attempting to excite
9 sympathy based on Keating's relative size. Such argument has no relevance to any
10 claim or defense of the parties. Fed. R. Evid. 402. Even if the Court were to find
11 such argument relevant, its probative value is substantially outweighed by unfair
12 prejudice to Glidewell because it has an undue tendency to suggest a decision based
13 on an improper, emotional basis. Fed. R. Evid. 403.

14 **Motion in Limine No. 8:** Motion to exclude testimony or argument that
15 Glidewell is trying to destroy competition in the market for dental crowns and
16 bridges. Such argument has no relevance to any legally cognizable claim or
17 defense of the parties. Fed. R. Evid. 402. Moreover, even if the Court finds such
18 argument relevant, its probative value is substantially outweighed by unfair
19 prejudice to Glidewell. Fed. R. Evid. 403.

20 **Motion in Limine No. 9:** Motion to exclude any evidence or argument
21 relating solely to any counterclaims or affirmative defenses that Keating or the
22 Court may dismiss prior to trial. Any evidence or argument relating solely to such
23 dismissed counterclaims or affirmative defenses is irrelevant to the remaining
24 issues in this action and will only serve to confuse the jury, unnecessarily prolong
25 the trial, and prejudice Glidewell. Fed. R. Evid. 402, 403.

26 **Motion in Limine No. 10:** Motion to exclude evidence or argument
27 regarding any statements or rulings by the Court on any party's motions, including
28 summary judgment motions, on the ground that such matters are irrelevant to the

1 claims or defenses of the parties and are likely to confuse the issues, mislead the
2 jury and waste time. Fed. R. Evid. 402, 403.

3 **Motion in Limine No. 11:** Motion to exclude evidence or argument
4 regarding any offers to compromise. Fed. R. Evid. 408.

5 **Motion in Limine No. 12:** Motion to exclude any evidence or argument
6 regarding allegations of illegal conduct by Glidewell unrelated to this action, on the
7 ground that such matters are irrelevant to the claims or defenses of the parties and
8 are likely to induce unfair prejudice against Glidewell, confuse the issues, mislead
9 the jury and waste time. Fed. R. Evid. 402, 403.

10
11 **Defendant's Motions in Limine:**

12 **Motion in Limine No. 1:** Motion to exclude any testimony from plaintiff's
13 expert Dr. Ronald Goldstein on the grounds that he was not timely disclosed and he
14 proffers an improper legal opinion. Glidewell will oppose this motion.

15 First, Dr. Goldstein should not be excluded because he was timely disclosed
16 as an expert on October 29, 2012 (the last day to disclose experts) and Keating has
17 not been prejudiced by his disclosure on this date. *See Roe v. Nevada*, 621 F. Supp.
18 2d 1039, 1060 (D. Nev. 2007); *Cyntegra, Inc. v. Idexx Laboratories, Inc.*, CV06-
19 4170PSG(CTX), 2007 WL 5193736 (C.D. Cal. Sept. 21, 2007) *aff'd*, *Cyntegra, Inc.*
20 *v. IDEXX Laboratories, Inc.*, 322 F. App'x 569 (9th Cir. 2009). In addition,
21 Glidewell offered to make Dr. Goldstein available for deposition following the
22 discovery cutoff; Keating refused.

23 Second, as set forth in Glidewell's Response to Keating's Objections to
24 Evidence Submitted by Glidewell's Expert Dr. Ronald Goldstein in Support of Its
25 Motions for Partial Summary Judgment [Dkt. 153], Dr. Goldstein's testimony is
26 proper. For his opinions, Dr. Goldstein properly relies on, among other things, his
27 personal knowledge and his experience in the dental field. Fed. R. Evid. 703; See
28 *United States v. Hankey*, 203 F.3d 1160, 1169 (9th Cir. 2000)(reliability based on

1 training, experience, and personal knowledge). Dr. Goldstein also properly relies
2 on statements from dentists to elucidate the bases for his opinions. Fed. R. Evid.
3 801(c); *United States v. Kirk*, 844 F.2d 660, 663 (9th Cir. 1988).

4 **Motion in Limine No. 2:** Motion to exclude any testimony from plaintiff's
5 expert David Franklyn on the grounds that his rebuttal opinions were untimely, his
6 opinions improperly rely on hearsay, and his opinions are not useful. Glidewell
7 will oppose this motion.

8 First, Franklyn should not be excluded because his rebuttal opinions were
9 timely disclosed on October 29, 2012 (the last day to disclose experts) and Keating
10 has not been prejudiced by his disclosure on this date. *See Roe v. Nevada*, 621 F.
11 Supp. 2d 1039, 1060 (D. Nev. 2007); *Cyntegra, Inc. v. Idexx Laboratories, Inc.*,
12 CV06-4170PSG(CTX), 2007 WL 5193736 (C.D. Cal. Sept. 21, 2007) *aff'd*,
13 *Cyntegra, Inc. v. IDEXX Laboratories, Inc.*, 322 F. App'x 569 (9th Cir. 2009). In
14 addition, Glidewell offered to make Franklyn available for further deposition
15 regarding these reports following the discovery cutoff; Keating refused.

16 Second, Franklyn's testimony does not improperly rely on hearsay. To the
17 contrary, Franklyn relies in part on interviews conducted with dentists to provide
18 relevant evidence that underlies his opinions regarding the strength of the BruxZir
19 mark and the risk of consumer confusion. Such anecdotal evidence is routinely
20 evaluated in considering both genericness and infringement. *See e.g., Hutchinson*
21 *v. Essence Communications, Inc.*, 769 F. Supp. 541, 554 (S.D.N.Y. 1991);
22 *Fancaster, Inc. v. Comcast Corp.*, 832 F. Supp. 2d 380, 419-20 (D.N.J. 2011).

23 Third, Franklyn's opinions concerning genericness of the BruxZir mark, the
24 strength of the BruxZir mark and the risk of consumer confusion constitute proper
25 legal opinions. Engaging experts (usually attorneys) to proffer opinion testimony
26 concerning such matters as the strength of a mark, similarity between marks, the
27 potential for customer confusion, and other specialized issues pertinent to a
28 trademark case is a commonly accepted practice. *See, e.g., Vail Assoc., Inc. v.*

1 *Vend-Tel-Co., Ltd.*, 516 F.3d 853, 861-63, (10th Cir. 2008); *B & B Hardware, Inc.*
2 *v. Hargis Industries, Inc.*, 252 F.3d 1010, 1012 (8th Cir. 2001).

3 **Motion in Limine No. 3:** Motion to exclude testimony Glidewell employee
4 Nicole Fallon as untimely disclosed and inconsistent with that which was timely
5 disclosed during discovery. Glidewell will oppose the motion. Glidewell disclosed
6 Ms. Fallon's identity and the subject matter of her knowledge in interrogatory
7 responses, which is adequate disclosure as a matter of law. *See Coleman v. Keebler*
8 *Co.*, 997 F. Supp. 1102, 1107 (N.D. Ind. 1998).

9 **Motion in Limine No. 4:** Motion to exclude testimony from Glidewell
10 employees James Shuck, Robin Bartolo, and Robin Carden to the extent their
11 testimony is improper hearsay. Glidewell will oppose this motion. This motion
12 constitutes nothing more than a request for an advisory opinion, and should
13 therefore be denied. The Court may address any objections that Keating may
14 choose to make to the specific testimony of these witnesses at trial.

15 **Motion in Limine No. 5:** Motion to exclude testimony from Glidewell's
16 "dentist witnesses" on the ground that the witnesses were untimely disclosed.
17 Glidewell will oppose this motion. As Glidewell understands it, Keating's motion
18 is directed to the anticipated testimony of [list the dentists that we disclosed in our
19 First Amended Disclosures]. These witnesses were disclosed in Glidewell's First
20 Amended Disclosures, which were served on October 29, 2012. The disclosure was
21 within the discovery period and was, therefore, timely. In addition, Keating has not
22 been prejudiced by the timing of disclosure of these witnesses; therefore, exclusion
23 would be improper. *See Roe v. Nevada*, 621 F. Supp. 2d 1039, 1060 (D. Nev.
24 2007); *Cyntegra, Inc. v. Idexx Laboratories, Inc.*, CV06-4170PSG(CTX), 2007 WL
25 5193736 (C.D. Cal. Sept. 21, 2007) *aff'd*, *Cyntegra, Inc. v. IDEXX Laboratories,*
26 *Inc.*, 322 F. App'x 569 (9th Cir. 2009).

27 **Motion in Limine No. 6:** Motion to exclude Glidewell from relying on
28 Exhibit 15 filed in support of Glidewell's motions for partial summary judgment as

1 evidence of actual confusion, on the ground that it constitutes hearsay. Glidewell
2 will oppose this motion. This summary judgment exhibit (and its analogues on the
3 Joint Exhibit List) contains two categories of evidence. The first, consisting of call
4 log notes created by Keating employees and produced by Keating, are not hearsay
5 pursuant to Rule 801(d)(2) of the Federal Rules of Evidence. The second,
6 consisting of prescription forms completed by dentists (or their assistants) and
7 submitted to Keating, all of which were produced by Keating, either do not
8 constitute hearsay because they are not offered for the truth of the matter asserted,
9 or because they fall within the state of mind or business records exceptions to the
10 hearsay rule. Fed. R. Evid. 803(3), (6); *Lahoti v. Vericheck, Inc.*, 636 F.3d 501, 509
11 (9th Cir. 2011).

12 **Motion in Limine No. 7:** Motion to exclude reference to Shaun Keating's
13 previous employment with Glidewell, including accusations of his sexual
14 harassment and reason for his termination. Glidewell will oppose this motion.
15 Glidewell will provide the bases for its opposition after Keating has explained the
16 basis for its motion.

17 **Motion in Limine No. 8:** Motion to exclude any reference to the fact that
18 Robert Brandon was terminated from Glidewell. Glidewell will oppose this
19 motion. Glidewell will provide the bases for its opposition after Keating has
20 explained the basis for its motion.

21 **Motion in Limine No. 9:** Motion to exclude Internet pages submitted with
22 Declaration of Deborah Mallgrave with Glidewell's reply in support of its motions
23 for partial summary judgment. Glidewell will oppose this motion. As best
24 Glidewell understands Keating's argument, it is that these pages were produced
25 after the close of discovery. However, Glidewell has a duty under Rule 26(e) of the
26 Federal Rules of Civil Procedure to supplement its disclosures, and Keating cannot
27 demonstrate that it was prejudiced by this disclosure
28

1 **IV. IDENTIFICATION OF LEGAL ISSUES**

2 Based on issues known to date, Glidewell expects the following issues of law
3 will arise:

4 1. Whether Keating's Third Counterclaim for Misuse of Trademark states a
5 legally cognizable claim. Glidewell's position, as detailed in Glidewell's Motion
6 for Partial Summary Judgment re Trademark Misuse, Unfair Competition, Unclean
7 Hands, Fair Use, and Estoppel [Dkt. #79-1], is that misuse of trademark is not a
8 legally cognizable claim. *See, e.g., Juno Online Services v. Juno Lighting, Inc.*, 979
9 F.Supp. 684 (N.D. Ill. 1997); 6 J. Thomas McCarthy, McCarthy on Trademarks and
10 Unfair Competition (4th ed. 2010) § 31:44.

11 2. Whether Glidewell's registered BruxZir trademark is entitled to a
12 presumption of secondary meaning. Glidewell's position, as detailed in
13 Glidewell's Reply in Support of its Motion for Partial Summary Judgment as to
14 Keating's Invalidity Defense and Counterclaim [Dkt. #183], is that Glidewell's
15 registered BruxZir trademark is entitled to a presumption of secondary meaning by
16 virtue of its registration. *See Americana Trading Inc. v. Russ Berrie & Co.*, 966
17 F.2d 1284, 1287 (9th Cir. 1992) ("[R]egistration carries a presumption of secondary
18 meaning. [Defendant] therefore had the burden to prove that secondary meaning
19 had not attached if it wished to argue that [plaintiff's] mark was weak."); *see also*
20 *Avery Dennison Corp. v. Sumpton*, 189 F.3d 868, 876 (9th Cir.1999); *Conversive,*
21 *Inc. v. Conversagent, Inc.*, 433 F. Supp. 2d 1079, 1088 (C.D. Cal. 2006); Ninth Cir.
22 Model Jury Instr. 15.10, cmt. (incorporating *Americana Trading* in a model
23 instruction "approved 11/2010," after *Zobmondo*).

24 **V. BIFURCATION OF ISSUES**

25 None.

26 **VI. JURY TRIAL**

27 Glidewell timely demanded a jury trial on all jury claims.

28 The following issues are triable to the jury:

1 • Glidewell’s claim and Keating’s counterclaim and defenses regarding
2 infringement of Glidewell’s federally registered Trademark Reg. No. 3,739,663 in
3 violation of section 32(a) of the Lanham Act, § 1114. *See Dairy Queen, Inc. v.*
4 *Wood*, 369 U.S. 469, 477 (1962).

5 • Glidewell’s claim and Keating’s counterclaim and defenses regarding
6 infringement of Glidewell’s rights in its unregistered BruxZir mark in violation of
7 section 43(a) of the Lanham Act, 15 U.S.C. § 1125. *See Internet Specialties W.,*
8 *Inc. v. Milon-DiGiorgio Enterprises, Inc.*, 559 F.3d 985, 988 (9th Cir. 2009); *see*
9 *also Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 477 (1962).

10 • Keating’s counterclaim for cancellation of the BruxZir mark and
11 defense for invalidity. *See Gracie v. Gracie*, 217 F.3d 1060, 1065 (9th Cir. 2000).

12 • Keating’s defense of fair use of the BruxZir mark. *See Horphag*
13 *Research Ltd. v. Pellegrini*, 337 F.3d 1036, 1041 (9th Cir. 2003).

14 The following issues are triable to the Court:

15 • The Parties’ unfair competition claims under section 17200 of the
16 California Business & Professions Code. *See Hodge v. Superior Court*, 145 Cal.
17 App. 4th 278, 284 (2006).

18 • Keating’s defense of estoppel. *See Hamilton v. State Farm Fire &*
19 *Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001).

20 • Glidewell’s and Keating’s requests for injunctive relief. *See In re*
21 *Tech. Licensing Corp.*, 423 F.3d 1286, 1289 (Fed. Cir. 2005).

22 • Whether the case is exceptional pursuant to 15 U.S.C. § 1117. *See*
23 *Watec Co., Ltd. v. Liu*, 403 F.3d 645, 656 (9th Cir. 2005) (vacating and remanding
24 fee award under 15 U.S.C. 1117(a) to district court because district court based
25 exceptional determination on jury finding when it is for the court to decide
26 exceptionality); 15 U.S.C. 1117(a) (“*The court in exceptional cases may award*
27 *reasonable attorney fees to the prevailing party*”) (emphasis added).

28 • Keating’s defense for misuse of a trademark and unclean hands. *See*

1 *Toyota Motor Sales, U.S.A., Inc. v. Tabari*, 610 F.3d 1171, 1184 (9th Cir. 2010);
2 *KEMA, Inc. v. Koperwhats*, 658 F.Supp.2d 1022, 1035-36 (N.D. Cal. 2009)
3 (defense of misuse of trademark is redundant with unclean hands).

4 **VII. ATTORNEYS' FEES**

5 If Glidewell prevails on the merits of its infringement claim, Glidewell will
6 seek to recover its attorneys' fees on the grounds that this case is exceptional within
7 the meaning of 15 U.S.C. § 1117(a). *See Earthquake Sound Corp. v. Bumper*
8 *Indus.*, 352 F.3d 1210, 1216-17 (9th Cir. 2003) (awarding attorneys' fees to
9 plaintiff in exceptional case and noting that "a case is exceptional within the
10 meaning of 15 U.S.C. § 1117(a) where the infringement is willful, deliberate,
11 knowing or malicious").

12 **VIII. ABANDONMENT OF ISSUES**

13 Glidewell has not abandoned any claims. Keating has abandoned its Second
14 Counterclaim for common law unfair competition.

15 Dated: January 7, 2013

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18 Philip J. Graves

19 Greer N. Shaw

20 Deborah S. Mallgrave

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22 James R. Glidewell Dental Ceramics, Inc. dba
23 Glidewell Laboratories

Glidewell Laboratories v. Keating Dental Arts, Inc.
United States District Court, Central, Case No. SACV11-01309-DOC (ANx)

CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2013, I electronically filed the document described as **JAMES R. GLIDEWELL DENTAL CERAMICS, INC.'S MEMORANDUM OF CONTENTIONS OF FACT AND LAW** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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